

December 05, 2024

WASHINGTON CIRCUIT  
DOE, JANECase No.:CL24001888-00  
vs. EMORY & HENRY UNIVERSITYLAURA A. AUSTIN, CLERK  
BY: /s/ Kendra Campbell  
DEPUTY CLERK

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I, Tricia Moore, Clerk of the Washington Circuit, certify that the contents of the record listed in the table of contents constitute the true and complete record, except for exhibits whose omission are noted in the table of contents.

WASHINGTON CIRCUIT  
DOE, JANE

Case No.:CL24001888-00  
vs. EMORY & HENRY UNIVERSITY

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I, Tricia Moore, Clerk of the Washington Circuit, certify that the contents of the record listed in the table of contents constitute the true and complete record, except for exhibits whose omission are noted in the table of contents.

**VIRGINIA:****IN THE CIRCUIT COURT FOR WASHINGTON COUNTY****JANE DOE,****Plaintiff,****v.****EMORY & HENRY UNIVERSITY,**  
c/o Mark R. Graham (registered agent)  
30461 Garnand Drive,  
Emory, Virginia 24327-2500,**Defendant.****Case No. 24-1888****JURY TRIAL DEMANDED****COMPLAINT**

Emory & Henry University did not want sixty year old equestrian coach – it wanted one thirty years younger. The University desperately wanted a pretext that it could use to replace Plaintiff with a younger employee, and finally got what it wanted when a false Title IX complaint was filed against Ms. Doe. When the University was already communicating about her replacement, the University received this complaint and jumped into action, terminating Ms. Doe within days of receiving the complaint. In doing so, the University completely ignored federal regulations enforcing Title IX and instead summarily terminated her. Accordingly, Ms. Doe brings this civil action against Defendant for violations of the Age Discrimination in Employment Act (“ADEA”), the Virginia Human Rights Act (“VHRA”), negligence, and negligence *per se*. For her Complaint against Defendant, Jane Doe states as follows:

### Parties

1. Jane Doe (“Ms. Doe”) was an assistant clinical professor or equine studies at the University. She is sixty-one years old.

2. Emory & Henry University (the “University”) is a private higher education institution located in Washington County, Virginia.

### Jurisdiction and Venue

3. Subject matter jurisdiction is proper in the Commonwealth of Virginia and the Circuit Court of Washington County because the amount in controversy exceeds \$25,000.

4. This Court possesses personal jurisdiction over the University by virtue of its domicile and its transacting business in the Commonwealth. Va. Code § 8.01-328.1(A).

5. Venue is proper in this Court because all causes of action arose in Washington County, Virginia. Va. Code § 8.01-262.

### The University’s Background

6. Institutions of higher education are required by law, as interpreted by the United States Supreme Court, to adjudicate claims of sexual harassment under the auspices of Title IX.

7. Title IX is a federal statute prohibiting discrimination on the basis of sex for all persons in educational institutions that receive federal funding. *See* 20 U.S.C. § 1681.

8. The University receives federal funding. Withdrawal of federal funding by the U.S. Department of Education would be financially ruinous for the University.

9. The University maintains a Title IX Office.

10. The University's Title IX personnel, including Title IX Coordinator Yancey Wilmoth, received training on the controlling Title IX regulations.

11. The University's Human Resources Office, including Director of Human Resources Tracy Peery, also received training on the controlling Title IX regulations.

**Federal Title IX Regulations and University Policy**

12. In May of 2020, the U.S. Department of Education promulgated regulations interpreting Title IX, codified at 34 C.F.R. 106, titled "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance."

13. The U.S. Department of Education interpreted the effective date to mean that the regulations applied to all reports of sexual harassment (construed broadly to include allegations of sexual assault and other offenses) concerning conduct occurring on or after August 14, 2020.

14. The federal regulations applied to this matter because, among other things, John Roe alleged conduct occurring exclusively in the year 2023.

15. The federal regulations set forth procedural requirements for the University's adjudication of Title IX matters. Accordingly, the University is required by the regulations to adopt these procedural provisions in its own policies and procedures, for use in student-on-student sexual misconduct complaints.

16. The University adopted the regulations' procedural requirements, as reflected in the University's "Title IX and Sexual Harassment Policy" ("Policy"), which states that the Policy is intended to "meet the University's obligations" under Title IX.

17. Therefore, the University is not at liberty to substantially alter its Policy without federal regulatory change. Rather, in exchange for federal funding and the payment of tuition by students (without which the University would not exist or be in a position to receive federal funding), the University has agreed to be bound by its regulation-compliant Policy.

18. Under the 2020 regulations, the University is obligated to respond to a "formal complaint" of sexual harassment in a way compliant with the grievance process outlined in 34 C.F.R. §106.45.

19. The term "formal complaint" is defined by 34 C.F.R. §106.30 as, in relevant part, "a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment."

20. The Department requires that a "formal complaint" be filed, and the grievance process at 34 C.F.R. §106.45 be completed, before "the imposition of any disciplinary sanctions or other actions that are not supportive measures." 34 C.F.R. §106.44(a).

21. The 34 C.F.R. 106.45 grievance process, in the context of postsecondary educational institutions receiving federal funding, requires that a University provide

formal notice of the allegations against the respondent before any investigation, generate an investigative report, hold a live hearing with cross examination, and contain an appeal process before any discipline is imposed, among other things. *See generally* 34 C.F.R. §106.45(b).

22. “Each of the procedural requirements in § 106.45 is prescribed because the Department views the requirement as important to ensuring a fair process for both parties rooted in the fundamental due process principles of notice and meaningful opportunities to be heard.” 85 Fed. Reg. 30053.

23. The term “formal complaint” has a static and defined meaning. If, for example, a recipient of federal funds could avoid the requirements of 34 C.F.R. §106.45 simply by labeling a complaint “informal,” the entire regulatory scheme would unravel. Any college or university could use this method to simply avoid ever using the 34 C.F.R. §106.45 grievance process.

#### **Background of Ms. Doe and John Roe**

24. Following a professional equestrian career, Ms. Doe began employment at the University in the Spring of 2023 as an assistant clinical professor in the equestrian program.

25. Ms. Doe replaced an employee who repeatedly drank to excess on the job but was never disciplined.

26. Ms. Doe never received any negative performance reviews during the entirety of her employment at the University.

27. Ms. Doe thoroughly enjoyed teaching and built positive relationships with all of her students, absent any complaints from any of her students.

28. John Roe was one of many students, male and female, who had a friendly professional relationship with Ms. Doe.

29. John Roe was somewhat of a class clown whose company was enjoyed by other students and Ms. Doe. He frequently made jokes with his fellow students and Ms. Doe.

**The Anonymous Title IX Complaint**

30. According to the University, on or around October 27, 2023, an employee at the University submitted an Title IX complaint against Ms. Doe.

31. On October 31, 2023, the University sent Ms. Doe an email seeking an interview related to the “informal complaint of sexual harassment.” The University did not tell Ms. Doe the substance of the complaint or who made the complaint. Eventually, however, she would discover that the complaint alleged that John Roe had been made “uncomfortable” by texts and “photos” from Ms. Doe.

32. John Roe never filed any complaint himself.

33. Nor did Ms. Doe ever send any sexual or inappropriate texts or photos (or anything else sexual whatsoever) to John Roe or any other student. While she texted many of her students and sent equestrian related photos, there was never anything remotely sexual about any of Ms. Doe’s behavior with her students.

**The University Conducts its “Informal” Investigation For A Week**

34. Ms. Doe sat for an interview on November 1, 2023. At that interview, both Yancey Wilmoth and Tracy Peery were present.

35. Both Wilmoth and Peery, having been trained in Title IX, knew that the “notice” sent to Ms. Doe seeking the interview was not complaint with federal regulations interpreting Title IX.

36. In fact, Wilmoth and Peery referred to the complaint against Ms. Doe as an “informal complaint.” But the term “informal complaint” does not appear in University Policy.

37. The term “informal complaint” is created out of whole cloth for the sole purpose of disclaiming the regulations’ requirement that a recipient follow 34 C.F.R. §106.45 in response to a “formal complaint.” Wilmoth and Peery, having been trained in Title IX, knew that a “formal complaint” must be adjudicated according to 34 C.F.R. §106.45, and they referred to the complaint against Ms. Doe as an “informal complaint” for the sole purpose of avoiding the regulations.

38. Indeed, according to federal regulation, a Notice of Allegations must, among other things, “include the identities of the parties involved in the incident, if known, [and] the conduct allegedly constituting sexual harassment under § 106.30, and the date and location of the alleged incident, if known.” 34 C.F.R. §106.45(b)(2)(B).

39. Further, “the written notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, under

paragraph (b)(5)(iv) of this section, and may inspect and review evidence under paragraph (b)(5)(vi) of this section.” *Id.*

40. A Notice of Allegations must also “inform the parties of any provision in the recipient’s code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.” *Id.*

41. The federal government’s purpose in drafting §106.45(b)(2) was that “[f]undamental fairness and due process principles require that a respondent knows the details of the allegations made against the respondent, to the extent the details are known, to provide adequate opportunity for the respondent to respond.”<sup>1</sup>

42. The “informal” “notice” contained none of the required elements cited above. Instead, it merely said that due to “the nature of the complaint” Ms. Doe’s “presence will … be required” at an interview.

43. During the interview, Ms. Doe was subjected to treatment that one would find in a Franz Kafka novel. Wilmoth and Peery were extremely hostile towards Ms. Doe; they interrogated her about a complaint where Ms. Doe did not know the details of the complaint. At the same time, they demanded confessions from Ms. Doe and accused her (without evidence) of deleting evidence in bad faith.

44. At the close of the interview, Ms. Doe offered to provide witnesses, among other things, to Wilmoth and Peery. Wilmoth and Peery told Ms. Doe “that’s

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<sup>1</sup> Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 85 Fed. Reg. 30026, 30133 (May 19, 2020).

good" and "that's what you're supposed to be doing." At a minimum, Wilmoth and Peery never instructed Ms. Doe to not reach out to witnesses.

45. Nor could they, because federal regulations protect Ms. Doe's right to gather and present evidence and witnesses. 34 C.F.R. §106.45(b)(5)(iii) (schools may not restrict the ability of parties to gather evidence).

46. But when Ms. Doe submitted witnesses to Wilmoth and Peery or was otherwise gathering witnesses and evidence in the days following the interview, Peery reprimanded her. Peery emailed Ms. Doe that she needed to "stop reaching out to students asking them to be witnesses for you." She continued (as if gathering witnesses to support her innocence was a violation in itself): "I have evidence that you have been doing so and have violated the confidentiality of the investigation. Your actions are unprofessional and need to stop."

47. When Peery sent this email, she knew that Ms. Doe had the right to gather witnesses and that the University could not even prohibit her from discussing the investigation. 34 C.F.R. §106.45(b)(5)(iii). But she chose to intimidate Ms. Doe anyway.

48. University Policy and federal law afford Ms. Doe the right to be presumed "not responsible" throughout the investigation and adjudication.

49. Obviously, the University did not presume Ms. Doe not responsible. It presumed her responsible and interrogated her with that presumption in mind.

50. The University took less than one week to adjudicate the "informal" complaint against Ms. Doe. It found her responsible for the allegation against her.

51. In a meeting on November 8, 2023, Ms. Doe was notified that she was terminated from employment because of the findings of the investigation. She was immediately escorted by security to clean out her desk, and was marched off of campus.

52. During the November 8 meeting, Peery insisted (in a transparent attempt to skirt liability) that Ms. Doe was terminated “at will” despite the findings against her.

**Ms. Doe Discovers Additional Context and Exhausts Remedies**

53. After Ms. Doe was terminated, she discovered from at least three witnesses with knowledge that the University intended to replace her with a younger employee before the Title IX allegations were ever made.

54. Although the University posted the job posting on November 14, 2023, it had communications with Ms. Doe’s replacement before the job was posted publicly.

55. Ms. Doe was indeed replaced by this employee, who is thirty years Ms. Doe’s junior.

56. Ms. Doe filed a charge of discrimination with the United States Equal Employment Opportunity Commission (“EEOC”) and the Virginia Office of Civil Rights on March 7, 2024.

57. She received a Notice of Right to Sue from the EEOC on July 25, 2024. This Notice also suffices as a Notice of Right to Sue under the VHRA. Va. Code §2.2-3907(I).

**The University Continues to Punish Ms. Doe**

58. As a result of the University's wrongful finding and termination, Ms. Doe suffers severe emotional, psychological, and financial harm.

59. While suffering this harm, and having to deal with the unexpected loss of income, Ms. Doe sought unemployment from the North Carolina Department of Commerce.

60. As the University had repeatedly told her on November 8, Ms. Doe represented to the North Carolina agency that she had been terminated "at will" and not "for cause." The former would entitle her to unemployment income whereas the latter would not.

61. In a remarkable showing of contempt towards Ms. Doe, the University opposed Ms. Doe's request for unemployment. At a hearing, counsel for the University testified and argued for the first time that Ms. Doe was not terminated "at will" and instead because she sexually harassed a student.

62. Appearing pro se, Ms. Doe testified at the hearing, and successfully obtained unemployment income. The North Carolina agency further made findings of fact that, among other things, "[Ms. Doe] did not sexually harass anyone during her tenure at with Emory & Henry College."

### **CAUSES OF ACTION**

#### **COUNT I**

#### **Age Discrimination in Violation of the ADEA**

63. Ms. Doe incorporates all prior allegations as if fully stated herein.

64. Ms. Doe was an employee over 40 years of age at the University, entitling her to rights under the federal Age Discrimination in Employment Act (“ADEA”).

65. The University is required to abide by ADEA’s prohibition on age discrimination.

66. The University discriminated against Ms. Doe on the basis of age by terminating her in violation of federal law and its policies and then replacing her with a younger employee.

67. Ms. Doe is protected by ADEA from discrimination on the basis of her age.

68. Ms. Doe was qualified for her position at the University.

69. Ms. Doe suffered adverse employment actions, including but not limited to her firing.

70. She was replaced by a younger employee.

71. There is no legitimate nondiscriminatory reason for the University’s behavior.

72. Even if a legitimate nondiscriminatory reason exists, it is merely pretext for unlawful discrimination.

73. Ms. Doe has suffered severe professional, economic, and psychological harm as a result of this discriminatory process orchestrated against her.

74. She requests liquidated damages under the ADEA.

**COUNT II**

**Age Discrimination in Violation of the VHRA**

75. Ms. Doe incorporates all prior allegations as if fully stated herein.

76. Ms. Doe was an employee over 40 years of age at the University, entitling her to rights under the Virginia Human Rights Act.

77. The University is required to abide by ADEA's prohibition on age discrimination.

78. The University discriminated against Ms. Doe on the basis of age by terminating her in violation of federal law and its policies and then replacing her with a younger employee.

79. Ms. Doe is protected by VHRA from discrimination on the basis of her age.

80. Ms. Doe was qualified for her position at the University.

81. Ms. Doe suffered adverse employment actions, including but not limited to her firing.

82. She was replaced by a younger employee.

83. There is no legitimate nondiscriminatory reason for the University's behavior.

84. Even if a legitimate nondiscriminatory reason exists, it is merely pretext for unlawful discrimination.

85. Ms. Doe has suffered severe professional, economic, and psychological harm as a result of this discriminatory process orchestrated against her.

86. She seeks compensatory and punitive damages, and any other available relief, under the VHRA.

**COUNT III**  
**Negligence *Per Se***

87. Ms. Doe incorporates all prior allegations as if fully stated herein.

88. The United States Department of Education promulgated regulations interpreting Title IX, codified at 34 C.F.R. 106, titled “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.”

89. 34 C.F.R. 106 is a binding regulation on the University.

90. 34 C.F.R. 106 was enacted for public safety. Specifically, the regulations were designed to both protect victims of sexual harassment and to protect students and faculty accused of sexual harassment.

91. Ms. Doe, as a faculty member, belonged to the class of persons the regulations were designed to protect.

92. The University’s violations of 34 C.F.R. 106 were a proximate cause of the injury to Ms. Doe, because the violations produced the harm to Ms. Doe and no efficient intervening cause exists that would have caused the harm to Ms. Doe.

93. As a result of the University’s breach of 34 C.F.R. 106, Ms. Doe suffers and continues to suffer substantial financial harm. Accordingly, Ms. Doe requests compensatory, incidental, and emotional damages.

**COUNT IV**  
**Negligence**

94. Ms. Doe incorporates all prior allegations as if fully stated herein.

95. In choosing to accept federal funding and adjudicate matters of sexual misconduct, the University assumed a duty to conduct its sexual misconduct proceedings with reasonable care under the circumstances, to avoid foreseeable harm to students or faculty subject to its procedures.

96. It was foreseeable that Ms. Doe would be harmed by the University's complete and total disregard of its own Title IX procedures.

97. The University breached its duty to Ms. Doe when it subjected her to the Title IX process and failed to abide by its own procedures, and otherwise conducted itself in a biased or partial manner.

98. The University's action was a proximate cause of Ms. Doe's injury, because Ms. Doe's injury would not have occurred absent the University's action, and because no efficient intervening cause exists that would have caused the harm to Ms. Doe.

99. As a result of the University's breach of its duty, Ms. Doe suffers and continues to suffer substantial financial harm. Accordingly, Ms. Doe requests compensatory, incidental, and emotional damages.

**JURY DEMAND**

100. Doe demands a trial by jury.

**PRAYER FOR RELIEF**

WHEREFORE Doe respectfully requests that this Court grant him the following relief against all Defendants:

1. Liquidated damages under the ADEA;
2. Other damages in an amount to be proved at trial;
3. Costs of suit;
4. Attorneys' fees, pursuant to 42 U.S.C § 1988(b); and
5. Such other and further relief as the Court deems necessary and proper.

Dated: October 22, 2024

Jane Doe  
By Counsel

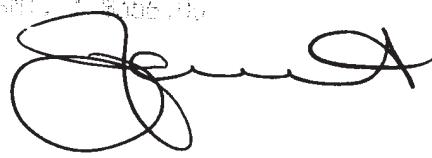
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*Counsel for Plaintiff Jane Doe*

VALIDATE CASE NUMBER  
REPORT #: 24-00057-JPJ-PMS  
DATE: 10/22/2024 11:45:27 AM  
CASE #: 1:24-cv-00057-JPJ-PMS  
OFFICE #: 0000 - JPF  
SUITE #: 1000



## COVER SHEET FOR FILING CIVIL ACTIONS

COMMONWEALTH OF VIRGINIA

Washington County

Circuit Court

Jane Doe

PLAINTIFF(S)

v./In re:

Emory &amp; Henry University

DEFENDANT(S)

I, the undersigned [ ] plaintiff [ ] defendant [x] attorney for [x] plaintiff [ ] defendant hereby notify the Clerk of Court that I am filing the following civil action. (Please indicate by checking box that most closely identifies the claim being asserted or relief sought.)

## GENERAL CIVIL

## Subsequent Actions

- Claim Impleading Third Party Defendant
- Monetary Damages
- No Monetary Damages
- Counterclaim
- Monetary Damages
- No Monetary Damages
- Cross Claim
- Interpleader
- Reinstatement (other than divorce or driving privileges)
- Removal of Case to Federal Court

## Business &amp; Contract

- Attachment
- Confessed Judgment
- Contract Action
- Contract Specific Performance
- Detinue
- Garnishment

## Property

- Annexation
- Condemnation
- Ejectment
- Encumber/Sell Real Estate
- Enforce Vendor's Lien
- Escheatment
- Establish Boundaries
- Landlord/Tenant
- Unlawful Detainer
- Mechanics Lien
- Partition
- Quiet Title
- Termination of Mineral Rights

## Tort

- Asbestos Litigation
- Compromise Settlement
- Intentional Tort
- Medical Malpractice
- Motor Vehicle Tort
- Product Liability
- Wrongful Death
- Other General Tort Liability

## ADMINISTRATIVE LAW

- Appeal/Judicial Review of Decision of (select one)
  - ABC Board
  - Board of Zoning
  - Compensation Board
  - DMV License Suspension
  - Employee Grievance Decision
  - Employment Commission
  - Local Government
  - Marine Resources Commission
  - School Board
  - Voter Registration
  - Other Administrative Appeal

## PROBATE/WILLS AND TRUSTS

- Accounting
- Aid and Guidance
- Appointment (select one)
  - Guardian/Conservator
  - Standby Guardian/Conservator
  - Custodian/Successor Custodian (UTMA)
- Trust (select one)
  - Impress/Declare/Create
  - Reformation
- Will (select one)
  - Construe
  - Contested

## DOMESTIC/FAMILY

- Adoption
  - Adoption – Foreign
- Adult Protection
- Annulment
  - Annulment – Counterclaim/Responsive Pleading
- Child Abuse and Neglect – Unfounded Complaint
- Civil Contempt
- Divorce (select one)
  - Complaint – Contested\*
  - Complaint – Uncontested\*
  - Counterclaim/Responsive Pleading
  - Reinstatement – Custody/Visitation/Support/Equitable Distribution
- Separate Maintenance
  - Separate Maintenance Counterclaim

DEPUTY CLERK CIRCUIT COURT  
WASHINGTON COUNTY, VA

FILED  
OCT 23 2024

## MISCELLANEOUS

- Amend Birth/Death Certificate
- Appointment (select one)
  - Church Trustee
  - Conservator of Peace
  - Marriage Celebrant
- Approval of Transfer of Structured Settlement
- Bond Forfeiture Appeal
- Declaratory Judgment
- Declare Death
- Driving Privileges (select one)
  - Reinstatement pursuant to § 46.2-427
  - Restoration – Habitual Offender or 3rd Offense
- Expungement
- Firearms Rights – Restoration
- Forfeiture of Property or Money
- Freedom of Information
- Injunction
- Interdiction
- Interrogatory
- Judgment Lien-Bill to Enforce
- Law Enforcement/Public Official Petition
- Name Change
- Referendum Elections
- Sever Order
- Taxes (select one)
  - Correct Erroneous State/Local
  - Delinquent
- Vehicle Confiscation
- Voting Rights – Restoration
- Other (please specify)

Damages in the amount of \$ 550,000.00 are claimed.

10/21/2024

DATE

Benjamin F. North

PRINT NAME

717 King St. Suite 300, Alexandria VA 22314

ADDRESS/TELEPHONE NUMBER OF SIGNATOR

ben@binnall.com

 PLAINTIFF DEFENDANT ATTORNEY FOR PLAINTIFF DEFENDANT

\*“Contested” divorce means any of the following matters are in dispute: grounds of divorce, spousal support and maintenance, child custody and/or visitation, child support, property distribution or debt allocation. An “Uncontested” divorce is filed on no fault grounds and none of the above issues are in dispute.

EMAIL ADDRESS OF SIGNATOR (OPTIONAL)

**Civil Action Type Codes**  
**(Clerk's Office Use Only)**

Accounting .....	ACCT	Ejectment .....	EJET
Adoption .....	ADOP	Encumber/Sell Real Estate .....	RE
Adoption – Foreign .....	FORA	Enforce Vendor's Lien .....	VEND
Adult Protection .....	PROT	Escheatment .....	ESC
Aid and Guidance .....	AID	Establish Boundaries .....	ESTB
Amend Birth/Death Certificate .....	AVR	Expungement .....	XPUN
Annexation .....	ANEX	Forfeiture of Property or Money .....	FORF
Annulment .....	ANUL	Freedom of Information .....	FOI
Annulment – Counterclaim/Responsive Pleading .....	ACRP	Garnishment .....	GARN
Appeal/Judicial Review .....		Injunction .....	INJ
ABC Board .....	ABC	Intentional Tort .....	ITOR
Board of Zoning .....	ZONE	Interdict .....	INTD
Compensation Board .....	ACOM	Interpleader .....	INTP
DMV License Suspension .....	JR	Interrogatory .....	INTR
Employment Commission .....	EMP	Judgment Lien – Bill to Enforce .....	LIEN
Employment Grievance Decision .....	GRV	Landlord/Tenant .....	LT
Local Government .....	GOVT	Law Enforcement/Public Official Petition .....	LEP
Marine Resources .....	MAR	Mechanics Lien .....	MECH
School Board .....	JR	Medical Malpractice .....	MED
Voter Registration .....	AVOT	Motor Vehicle Tort .....	MV
Other Administrative Appeal .....	AAPL	Name Change .....	NC
Appointment .....		Other General Tort Liability .....	GTOR
Conservator of Peace .....	COP	Partition .....	PART
Church Trustee .....	AOCT	Permit, Unconstitutional Grant/Denial by Locality .....	LUC
Custodian/Successor Custodian (UTMA) .....	UTMA	Petition – (Miscellaneous) .....	PET
Guardian/Conservator .....	APPT	Product Liability .....	PROD
Marriage Celebrant .....	ROMC	Quiet Title .....	QT
Approval of Transfer of Structured Settlement .....	SS	Referendum Elections .....	ELEC
Asbestos Litigation .....	AL	Reinstatement (Other than divorce or driving privileges) .....	REIN
Attachment .....	ATT	Removal of Case to Federal Court .....	REM
Bond Forfeiture Appeal .....	BFA	Restore Firearms Rights – Felony .....	RFRF
Child Abuse and Neglect – Unfounded Complaint .....	CAN	Restore Firearms Rights – Review .....	RFRR
Civil Contempt .....	CCON	Separate Maintenance .....	SEP
Claim Impleading Third Party Defendant – Monetary Damages/No Monetary Damages .....	CTP	Separate Maintenance – Counterclaim/Responsive Pleading .....	SCRP
Complaint – (Miscellaneous) .....	COM	Sever Order .....	SEVR
Compromise Settlement .....	COMP	Sex Change .....	COS
Condemnation .....	COND	Taxes .....	
Confessed Judgment .....	CJ	Correct Erroneous State/Local .....	CTAX
Contract Action .....	CNTR	Delinquent .....	DTAX
Contract Specific Performance .....	PERF	Termination of Mineral Rights .....	MIN
Counterclaim – Monetary Damages/No Monetary Damages .....	CC	Trust – Impress/Declare/Create .....	TRST
Cross Claim .....	CROS	Trust – Reformation .....	REFT
Declaratory Judgment .....	DECL	Uniform Foreign Country Money Judgments .....	RFCJ
Declare Death .....	DDTH	Unlawful Detainer .....	UD
Detinue .....	DET	Vehicle Confiscation .....	VEH
Divorce .....		Violation – Election Law .....	VEL
Complaint – Contested/Uncontested .....	DIV	Voting Rights – Restoration .....	VOTE
Counterclaim/Responsive Pleading .....	DCRP	Will Construction .....	CNST
Reinstatement – Custody/Visitation/Support/ Equitable Distribution .....	CVS	Will Contested .....	WILL
Driving Privileges .....		Wrists .....	
Reinstatement pursuant to § 46.2-427 .....	DRIV	Certiorari .....	WC
Restoration – 3 <sup>rd</sup> Offense .....	REST	Habeas Corpus .....	WHC
		Mandamus .....	WM
		Prohibition .....	WP
		Quo Warranto .....	WQW
		Wrongful Death .....	WD

**COMMONWEALTH OF VIRGINIA**



WASHINGTON CIRCUIT COURT  
Civil Division  
189 EAST MAIN STREET  
ABINGDON VA 24210  
(276) 676-6224

Virginia:

In the WASHINGTON CIRCUIT COURT

Case number: 191CL24001888-00

Service number: 001

Service filed: October 22, 2024

Judge:

Served by: WASHINGTON COUNTY

Style of case: JANE DOE vs EMORY & HENRY UNIVERSITY

Service on: EMORY & HENRY UNIVERSITY  
C/O MARK GRAHAM (RA)  
30461 GARNAND DR  
EMORY VA 24327

Attorney: NORTH, BENJAMIN F  
717 KING ST SUITE 300  
ALEXANDRIA VA 22314

Instructions: **COMPLAINT**

Returns shall be made hereon, showing service of Summons issued Wednesday, October 23, 2024 with a copy of the Complaint filed Tuesday, October 22, 2024 attached.

Hearing date :

Service issued: Wednesday, October 23, 2024

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For Sheriff Use Only

## COMMONWEALTH OF VIRGINIA



## WASHINGTON CIRCUIT COURT

Civil Division  
189 EAST MAIN STREET  
ABINGDON VA 24210  
(276) 676-6224

## Summons

To: EMORY & HENRY UNIVERSITY  
C/O MARK GRAHAM (RA)  
30461 GARNAND DR  
EMORY VA 24327

Case No. 191CL24001888-00

The party upon whom this summons and the attached complaint are served is hereby notified that unless within 21 days after such service, response is made by filing in the clerk's office of this court a pleading in writing, in proper legal form, the allegations and charges may be taken as admitted and the court may enter an order, judgment, or decree against such party either by default or after hearing evidence.

Appearance in person is not required by this summons.

Done in the name of the Commonwealth of Virginia on, Wednesday, October 23, 2024

Clerk of Court: PATRICIA S. MOORE

by \_\_\_\_\_

A handwritten signature of Patricia S. Moore, which is a stylized, cursive script.

(CLERK/DEPUTY CLERK)

Instructions: COMPLAINT

Hearing Official:

Attorney's name: NORTH, BENJAMIN F  
717 KING ST SUITE 300  
ALEXANDRIA VA 22314

VIRGINIA:

## IN THE CIRCUIT COURT FOR WASHINGTON COUNTY

DEPUTY CLERK CIRCUIT COURT  
WASHINGTON COUNTY, VA**JANE DOE,****Plaintiff,**

v.

**EMORY & HENRY UNIVERSITY,**  
c/o Mark R. Graham (registered agent)  
30461 Garnand Drive,  
Emory, Virginia 24327-2500,**Defendant.**Case No. 24-1888**JURY TRIAL DEMANDED****COMPLAINT**

Emory & Henry University did not want sixty year old equestrian coach – it wanted one thirty years younger. The University desperately wanted a pretext that it could use to replace Plaintiff with a younger employee, and finally got what it wanted when a false Title IX complaint was filed against Ms. Doe. When the University was already communicating about her replacement, the University received this complaint and jumped into action, terminating Ms. Doe within days of receiving the complaint. In doing so, the University completely ignored federal regulations enforcing Title IX and instead summarily terminated her. Accordingly, Ms. Doe brings this civil action against Defendant for violations of the Age Discrimination in Employment Act (“ADEA”), the Virginia Human Rights Act (“VHRA”), negligence, and negligence *per se*. For her Complaint against Defendant, Jane Doe states as follows:

**Parties**

1. Jane Doe ("Ms. Doe") was an assistant clinical professor or equine studies at the University. She is sixty-one years old.

2. Emory & Henry University (the "University") is a private higher education institution located in Washington County, Virginia.

**Jurisdiction and Venue**

3. Subject matter jurisdiction is proper in the Commonwealth of Virginia and the Circuit Court of Washington County because the amount in controversy exceeds \$25,000.

4. This Court possesses personal jurisdiction over the University by virtue of its domicile and its transacting business in the Commonwealth. Va. Code § 8.01-328.1(A).

5. Venue is proper in this Court because all causes of action arose in Washington County, Virginia. Va. Code § 8.01-262.

**The University's Background**

6. Institutions of higher education are required by law, as interpreted by the United States Supreme Court, to adjudicate claims of sexual harassment under the auspices of Title IX.

7. Title IX is a federal statute prohibiting discrimination on the basis of sex for all persons in educational institutions that receive federal funding. *See* 20 U.S.C. § 1681.

8. The University receives federal funding. Withdrawal of federal funding by the U.S. Department of Education would be financially ruinous for the University.

9. The University maintains a Title IX Office.

10. The University's Title IX personnel, including Title IX Coordinator Yancey Wilmoth, received training on the controlling Title IX regulations.

11. The University's Human Resources Office, including Director of Human Resources Tracy Peery, also received training on the controlling Title IX regulations.

**Federal Title IX Regulations and University Policy**

12. In May of 2020, the U.S. Department of Education promulgated regulations interpreting Title IX, codified at 34 C.F.R. 106, titled "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance."

13. The U.S. Department of Education interpreted the effective date to mean that the regulations applied to all reports of sexual harassment (construed broadly to include allegations of sexual assault and other offenses) concerning conduct occurring on or after August 14, 2020.

14. The federal regulations applied to this matter because, among other things, John Roe alleged conduct occurring exclusively in the year 2023.

15. The federal regulations set forth procedural requirements for the University's adjudication of Title IX matters. Accordingly, the University is required by the regulations to adopt these procedural provisions in its own policies and procedures, for use in student-on-student sexual misconduct complaints.

16. The University adopted the regulations' procedural requirements, as reflected in the University's "Title IX and Sexual Harassment Policy" ("Policy"), which states that the Policy is intended to "meet the University's obligations" under Title IX.

17. Therefore, the University is not at liberty to substantially alter its Policy without federal regulatory change. Rather, in exchange for federal funding and the payment of tuition by students (without which the University would not exist or be in a position to receive federal funding), the University has agreed to be bound by its regulation-compliant Policy.

18. Under the 2020 regulations, the University is obligated to respond to a "formal complaint" of sexual harassment in a way compliant with the grievance process outlined in 34 C.F.R. §106.45.

19. The term "formal complaint" is defined by 34 C.F.R. §106.30 as, in relevant part, "a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment."

20. The Department requires that a "formal complaint" be filed, and the grievance process at 34 C.F.R. §106.45 be completed, before "the imposition of any disciplinary sanctions or other actions that are not supportive measures." 34 C.F.R. §106.44(a).

21. The 34 C.F.R. 106.45 grievance process, in the context of postsecondary educational institutions receiving federal funding, requires that a University provide

formal notice of the allegations against the respondent before any investigation, generate an investigative report, hold a live hearing with cross examination, and contain an appeal process before any discipline is imposed, among other things. *See generally* 34 C.F.R. §106.45(b).

22. “Each of the procedural requirements in § 106.45 is prescribed because the Department views the requirement as important to ensuring a fair process for both parties rooted in the fundamental due process principles of notice and meaningful opportunities to be heard.” 85 Fed. Reg. 30053.

23. The term “formal complaint” has a static and defined meaning. If, for example, a recipient of federal funds could avoid the requirements of 34 C.F.R. §106.45 simply by labeling a complaint “informal,” the entire regulatory scheme would unravel. Any college or university could use this method to simply avoid ever using the 34 C.F.R. §106.45 grievance process.

#### **Background of Ms. Doe and John Roe**

24. Following a professional equestrian career, Ms. Doe began employment at the University in the Spring of 2023 as an assistant clinical professor in the equestrian program.

25. Ms. Doe replaced an employee who repeatedly drank to excess on the job but was never disciplined.

26. Ms. Doe never received any negative performance reviews during the entirety of her employment at the University.

27. Ms. Doe thoroughly enjoyed teaching and built positive relationships with all of her students, absent any complaints from any of her students.

28. John Roe was one of many students, male and female, who had a friendly professional relationship with Ms. Doe.

29. John Roe was somewhat of a class clown whose company was enjoyed by other students and Ms. Doe. He frequently made jokes with his fellow students and Ms. Doe.

#### **The Anonymous Title IX Complaint**

30. According to the University, on or around October 27, 2023, an employee at the University submitted an Title IX complaint against Ms. Doe.

31. On October 31, 2023, the University sent Ms. Doe an email seeking an interview related to the “informal complaint of sexual harassment.” The University did not tell Ms. Doe the substance of the complaint or who made the complaint. Eventually, however, she would discover that the complaint alleged that John Roe had been made “uncomfortable” by texts and “photos” from Ms. Doe.

32. John Roe never filed any complaint himself.

33. Nor did Ms. Doe ever send any sexual or inappropriate texts or photos (or anything else sexual whatsoever) to John Roe or any other student. While she texted many of her students and sent equestrian related photos, there was never anything remotely sexual about any of Ms. Doe’s behavior with her students.

#### **The University Conducts its “Informal” Investigation For A Week**

34. Ms. Doe sat for an interview on November 1, 2023. At that interview, both Yancey Wilmoth and Tracy Peery were present.

35. Both Wilmoth and Peery, having been trained in Title IX, knew that the “notice” sent to Ms. Doe seeking the interview was not complaint with federal regulations interpreting Title IX.

36. In fact, Wilmoth and Peery referred to the complaint against Ms. Doe as an “informal complaint.” But the term “informal complaint” does not appear in University Policy.

37. The term “informal complaint” is created out of whole cloth for the sole purpose of disclaiming the regulations’ requirement that a recipient follow 34 C.F.R. §106.45 in response to a “formal complaint.” Wilmoth and Peery, having been trained in Title IX, knew that a “formal complaint” must be adjudicated according to 34 C.F.R. §106.45, and they referred to the complaint against Ms. Doe as an “informal complaint” for the sole purpose of avoiding the regulations.

38. Indeed, according to federal regulation, a Notice of Allegations must, among other things, “include the identities of the parties involved in the incident, if known, [and] the conduct allegedly constituting sexual harassment under § 106.30, and the date and location of the alleged incident, if known.” 34 C.F.R. §106.45(b)(2)(B).

39. Further, “the written notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, under

paragraph (b)(5)(iv) of this section, and may inspect and review evidence under paragraph (b)(5)(vi) of this section.” *Id.*

40. A Notice of Allegations must also “inform the parties of any provision in the recipient’s code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.” *Id.*

41. The federal government’s purpose in drafting §106.45(b)(2) was that “[f]undamental fairness and due process principles require that a respondent knows the details of the allegations made against the respondent, to the extent the details are known, to provide adequate opportunity for the respondent to respond.”<sup>1</sup>

42. The “informal” “notice” contained none of the required elements cited above. Instead, it merely said that due to “the nature of the complaint” Ms. Doe’s “presence will … be required” at an interview.

43. During the interview, Ms. Doe was subjected to treatment that one would find in a Franz Kafka novel. Wilmoth and Peery were extremely hostile towards Ms. Doe; they interrogated her about a complaint where Ms. Doe did not know the details of the complaint. At the same time, they demanded confessions from Ms. Doe and accused her (without evidence) of deleting evidence in bad faith.

44. At the close of the interview, Ms. Doe offered to provide witnesses, among other things, to Wilmoth and Peery. Wilmoth and Peery told Ms. Doe “that’s

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<sup>1</sup> Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 85 Fed. Reg. 30026, 30133 (May 19, 2020).

good" and "that's what you're supposed to be doing." At a minimum, Wilmoth and Peery never instructed Ms. Doe to not reach out to witnesses.

45. Nor could they, because federal regulations protect Ms. Doe's right to gather and present evidence and witnesses. 34 C.F.R. §106.45(b)(5)(iii) (schools may not restrict the ability of parties to gather evidence).

46. But when Ms. Doe submitted witnesses to Wilmoth and Peery or was otherwise gathering witnesses and evidence in the days following the interview, Peery reprimanded her. Peery emailed Ms. Doe that she needed to "stop reaching out to students asking them to be witnesses for you." She continued (as if gathering witnesses to support her innocence was a violation in itself): "I have evidence that you have been doing so and have violated the confidentiality of the investigation. Your actions are unprofessional and need to stop."

47. When Peery sent this email, she knew that Ms. Doe had the right to gather witnesses and that the University could not even prohibit her from discussing the investigation. 34 C.F.R. §106.45(b)(5)(iii). But she chose to intimidate Ms. Doe anyway.

48. University Policy and federal law afford Ms. Doe the right to be presumed "not responsible" throughout the investigation and adjudication.

49. Obviously, the University did not presume Ms. Doe not responsible. It presumed her responsible and interrogated her with that presumption in mind.

50. The University took less than one week to adjudicate the "informal" complaint against Ms. Doe. It found her responsible for the allegation against her.

51. In a meeting on November 8, 2023, Ms. Doe was notified that she was terminated from employment because of the findings of the investigation. She was immediately escorted by security to clean out her desk, and was marched off of campus.

52. During the November 8 meeting, Peery insisted (in a transparent attempt to skirt liability) that Ms. Doe was terminated “at will” despite the findings against her.

**Ms. Doe Discovers Additional Context and Exhausts Remedies**

53. After Ms. Doe was terminated, she discovered from at least three witnesses with knowledge that the University intended to replace her with a younger employee before the Title IX allegations were ever made.

54. Although the University posted the job posting on November 14, 2023, it had communications with Ms. Doe’s replacement before the job was posted publicly.

55. Ms. Doe was indeed replaced by this employee, who is thirty years Ms. Doe’s junior.

56. Ms. Doe filed a charge of discrimination with the United States Equal Employment Opportunity Commission (“EEOC”) and the Virginia Office of Civil Rights on March 7, 2024.

57. She received a Notice of Right to Sue from the EEOC on July 25, 2024. This Notice also suffices as a Notice of Right to Sue under the VHRA. Va. Code §2.2-3907(I).

**The University Continues to Punish Ms. Doe**

58. As a result of the University's wrongful finding and termination, Ms. Doe suffers severe emotional, psychological, and financial harm.

59. While suffering this harm, and having to deal with the unexpected loss of income, Ms. Doe sought unemployment from the North Carolina Department of Commerce.

60. As the University had repeatedly told her on November 8, Ms. Doe represented to the North Carolina agency that she had been terminated "at will" and not "for cause." The former would entitle her to unemployment income whereas the latter would not.

61. In a remarkable showing of contempt towards Ms. Doe, the University opposed Ms. Doe's request for unemployment. At a hearing, counsel for the University testified and argued for the first time that Ms. Doe was not terminated "at will" and instead because she sexually harassed a student.

62. Appearing pro se, Ms. Doe testified at the hearing, and successfully obtained unemployment income. The North Carolina agency further made findings of fact that, among other things, "[Ms. Doe] did not sexually harass anyone during her tenure at with Emory & Henry College."

### **CAUSES OF ACTION**

#### **COUNT I**

##### **Age Discrimination in Violation of the ADEA**

63. Ms. Doe incorporates all prior allegations as if fully stated herein.

64. Ms. Doe was an employee over 40 years of age at the University, entitling her to rights under the federal Age Discrimination in Employment Act (“ADEA”).

65. The University is required to abide by ADEA’s prohibition on age discrimination.

66. The University discriminated against Ms. Doe on the basis of age by terminating her in violation of federal law and its policies and then replacing her with a younger employee.

67. Ms. Doe is protected by ADEA from discrimination on the basis of her age.

68. Ms. Doe was qualified for her position at the University.

69. Ms. Doe suffered adverse employment actions, including but not limited to her firing.

70. She was replaced by a younger employee.

71. There is no legitimate nondiscriminatory reason for the University’s behavior.

72. Even if a legitimate nondiscriminatory reason exists, it is merely pretext for unlawful discrimination.

73. Ms. Doe has suffered severe professional, economic, and psychological harm as a result of this discriminatory process orchestrated against her.

74. She requests liquidated damages under the ADEA.

**COUNT II**

**Age Discrimination in Violation of the VHRA**

75. Ms. Doe incorporates all prior allegations as if fully stated herein.

76. Ms. Doe was an employee over 40 years of age at the University, entitling her to rights under the Virginia Human Rights Act.

77. The University is required to abide by ADEA's prohibition on age discrimination.

78. The University discriminated against Ms. Doe on the basis of age by terminating her in violation of federal law and its policies and then replacing her with a younger employee.

79. Ms. Doe is protected by VHRA from discrimination on the basis of her age.

80. Ms. Doe was qualified for her position at the University.

81. Ms. Doe suffered adverse employment actions, including but not limited to her firing.

82. She was replaced by a younger employee.

83. There is no legitimate nondiscriminatory reason for the University's behavior.

84. Even if a legitimate nondiscriminatory reason exists, it is merely pretext for unlawful discrimination.

85. Ms. Doe has suffered severe professional, economic, and psychological harm as a result of this discriminatory process orchestrated against her.

86. She seeks compensatory and punitive damages, and any other available relief, under the VHRA.

**COUNT III**  
**Negligence *Per Se***

87. Ms. Doe incorporates all prior allegations as if fully stated herein.

88. The United States Department of Education promulgated regulations interpreting Title IX, codified at 34 C.F.R. 106, titled “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.”

89. 34 C.F.R. 106 is a binding regulation on the University.

90. 34 C.F.R. 106 was enacted for public safety. Specifically, the regulations were designed to both protect victims of sexual harassment and to protect students and faculty accused of sexual harassment.

91. Ms. Doe, as a faculty member, belonged to the class of persons the regulations were designed to protect.

92. The University’s violations of 34 C.F.R. 106 were a proximate cause of the injury to Ms. Doe, because the violations produced the harm to Ms. Doe and no efficient intervening cause exists that would have caused the harm to Ms. Doe.

93. As a result of the University’s breach of 34 C.F.R. 106, Ms. Doe suffers and continues to suffer substantial financial harm. Accordingly, Ms. Doe requests compensatory, incidental, and emotional damages.

**COUNT IV**  
**Negligence**

94. Ms. Doe incorporates all prior allegations as if fully stated herein.

95. In choosing to accept federal funding and adjudicate matters of sexual misconduct, the University assumed a duty to conduct its sexual misconduct proceedings with reasonable care under the circumstances, to avoid foreseeable harm to students or faculty subject to its procedures.

96. It was foreseeable that Ms. Doe would be harmed by the University's complete and total disregard of its own Title IX procedures.

97. The University breached its duty to Ms. Doe when it subjected her to the Title IX process and failed to abide by its own procedures, and otherwise conducted itself in a biased or partial manner.

98. The University's action was a proximate cause of Ms. Doe's injury, because Ms. Doe's injury would not have occurred absent the University's action, and because no efficient intervening cause exists that would have caused the harm to Ms. Doe.

99. As a result of the University's breach of its duty, Ms. Doe suffers and continues to suffer substantial financial harm. Accordingly, Ms. Doe requests compensatory, incidental, and emotional damages.

**JURY DEMAND**

100. Doe demands a trial by jury.

**PRAYER FOR RELIEF**

WHEREFORE Doe respectfully requests that this Court grant him the following relief against all Defendants:

1. Liquidated damages under the ADEA;
2. Other damages in an amount to be proved at trial;
3. Costs of suit;
4. Attorneys' fees, pursuant to 42 U.S.C § 1988(b); and
5. Such other and further relief as the Court deems necessary and proper.

Dated: October 22, 2024

Jane Doe  
By Counsel

BINNALL LAW GROUP, PLLC



Benjamin North, VSB No. 97439  
Lindsay R. McKasson, VSB No. 96074  
717 King Street, Suite 200  
Alexandria, Virginia 22314  
Phone: (703) 888-1943  
Fax: (703) 888-1930  
Email: ben@binnall.com  
lindsay@binnall.com

*Counsel for Plaintiff Jane Doe*

COMMONWEALTH OF VIRGINIA



WASHINGTON CIRCUIT COURT  
Civil Division  
189 EAST MAIN STREET  
ABINGDON VA 24210  
(276) 676-6224

FILED

OCT 30 2024

DEPUTY CLERK CIRCUIT COURT  
WASHINGTON COUNTY, VA

Virginia:

In the WASHINGTON CIRCUIT COURT

Case number: 191CL24001888-00

Service number: 001

Service filed: October 22, 2024

Judge:

Served by: WASHINGTON COUNTY

Style of case: JANE DOE vs EMORY & HENRY UNIVERSITY

Service on: EMORY & HENRY UNIVERSITY  
C/O MARK GRAHAM (RA)  
30461 GARNAND DR  
EMORY VA 24327

Attorney: NORTH, BENJAMIN F  
717 KING ST SUITE 300  
ALEXANDRIA VA 22314

COMPLAINT  
Instructions:

Returns shall be made hereon, showing service of Summons issued Wednesday, October 23, 2024 with a copy of the Complaint filed Tuesday, October 22, 2024 attached.

Hearing date :

Service issued: Wednesday, October 23, 2024

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For Sheriff Use Only

EXECUTED IN THE COUNTY OF WASHINGTON, VA  
BY DELIVERING A COPY OF THE ABOVE MENTIONED  
PAPERS TO: Mark Graham

IN PERSON 10/29/24 DIS A.J. Rhine  
DATE SERVING OFFICER  
FOR: BLAKE ANDIS, SHERIFF

## VIRGINIA:

**IN THE CIRCUIT COURT FOR WASHINGTON COUNTY**

JANE DOE, )  
 )  
 Plaintiff, )  
 )  
 v. ) Case No. CL24001888-00  
 )  
 EMORY AND HENRY UNIVERSITY, )  
 )  
 Defendant. )

**NOTICE OF FILING OF NOTICE OF REMOVAL**

PLEASE TAKE NOTICE that on November 15, 2024, Defendant, Emory and Henry University, by counsel, filed a Notice of Removal of the above-styled action with the United States District Court for the Western District of Virginia, Abingdon Division (the "District Court"). A true and accurate copy of the Notice of Removal filed with the District Court is attached hereto as

**Exhibit A.**

DATED: November 15, 2024

## EMORY AND HENRY COLLEGE

Mr. Elwha Dr.

## Counsel

Mary Elizabeth Davis (VSB No. 41908)  
Caitlin E. Tobin (VSB No. 98432)  
WHITEFORD, TAYLOR & PRESTON L.L.P.  
Two James Center  
1021 E. Cary Street, Suite 2001  
Richmond, Virginia 23219  
Telephone: (804) 799-7864  
Facsimile: (804) 977-3294  
E-mail: bdavis@whitefordlaw.com  
E-mail: ctobin@whitefordlaw.com

*Counsel for Defendant Emory and Henry University*

**CERTIFICATE OF SERVICE**

I hereby certify that on November 15, 2024, a true and accurate copy of the foregoing *Notice of Filing of Notice of Removal* was sent by electronic mail and first-class mail, postage prepaid, to:

Benjamin North (VSB No. 97439)  
Lindsay R. McKasson (VSB No. 96074)  
Binnall Law Group  
717 King Street, Suite 200  
Alexandria, Virginia 22314  
Telephone: (703) 888-1943  
Facsimile: (703) 888-1930  
Email: ben@binnall.com  
lindsay@binnall.com

*Counsel for Plaintiff Jane Doe*



---

Mary Elizabeth Davis

Case 1:24-cv-00057-JPJ-PMS Document 1 Filed 11/15/24 Page 1 of 4 Pageid#:  
1

CLERKS OFFICE US DISTRICT COURT  
AT ABINGDON, VA  
FILED

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
Abingdon Division**

November 15, 2024

LAURA A. AUSTIN, CLERK  
BY: /s/ Kendra Campbell  
DEPUTY CLERK

JANE DOE, )  
                  )  
Plaintiff, )  
                  )  
v.              )                   Civil Action No. 1:24cv57  
                  )  
EMORY & HENRY UNIVERSITY, )  
                  )  
Defendant. )

**NOTICE OF REMOVAL**

Defendant, Emory & Henry University (the “University” or “Defendant”), by counsel, pursuant to 28 U.S.C. §§ 1331, 1367, 1441, and 1446, petitions this Court for removal of an action instituted by Jane Doe (“Doe” or “Plaintiff”), in the Circuit Court for Washington County, styled *Jane Doe v. Emory and Henry University* (Case No. CL24001888-00) (the “State Court Action”).

In support of this Notice, Defendant respectfully states as follows:

**BACKGROUND**

1. On October 22, 2024, Plaintiff commenced this action by filing a Complaint in the Circuit Court for Washington County.
2. In compliance with 28 U.S.C. § 1446(a), a copy of all process, pleadings, and orders served upon Defendant are attached hereto as Exhibit A.

**TIMELINESS OF REMOVAL AND VENUE**

3. The University was served with process in the State Court Action on October 29, 2024.

4. The removal of the State Court Action is timely because, pursuant to 28 U.S.C. § 1446(b), this Notice of Removal has been filed within thirty (30) days after the University was served with process.

5. This Court is the proper venue for removal under 28 U.S.C. § 1441(a) because it is the federal district court that embraces the Circuit Court for Washington County, where the State Court Action was filed and is pending.

#### **GROUNDS FOR REMOVAL**

6. The four-count Complaint alleges that the University violated the Age Discrimination in Employment Act, 29 U.S.C. §§ 621–634 (the “ADEA”); that the University violated the Virginia Human Rights Act (the “VHRA”); and claims of negligence and negligence per se related to the University’s process and procedures under Title IX of the Education Act of 1972, 20 U.S.C. §§ 1681 *et seq.* (“Title IX”).

7. This Court has original jurisdiction over Plaintiff’s federal question claim and supplemental jurisdiction over Plaintiff’s state law claims. *See* 28 U.S.C. § 1331 (declaring that the district courts have original jurisdiction of all civil actions arising under the laws of the United States); 28 U.S.C. § 1367(a) (“[I]n any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy.”).

8. This Court has original jurisdiction over Plaintiff’s federal question claim under the ADEA, as this claim arises under the laws of the United States. *See* 28 U.S.C. § 1331.

9. This Court has supplemental jurisdiction over Plaintiff’s state law claims for violation of the VHRA, negligence per se, and negligence, as they are based on the same set of

facts as the federal claim and, thus, form part of the same case or controversy as Plaintiff's ADEA claim. *See* 28 U.S.C. § 1367(a).

10. Accordingly, removal to this Court is proper pursuant to 28 U.S.C. §§ 1331, 1367(a), and 1441(a).

**NOTICE TO PLAINTIFF AND STATE COURT**

11. Pursuant to 28 U.S.C. § 1446(d), the University, by and through the undersigned counsel, is contemporaneously filing a copy of this Notice of Removal with the Clerk of the Circuit Court of Washington County (the "Notice of Filing of Notice of Removal"). A true and correct copy of the Notice of Filing of Notice of Removal is attached hereto as **Exhibit B**.

12. This Notice of Removal is also being served on Plaintiff's counsel pursuant to 28 U.S.C. § 1446(d).

WHEREFORE, Defendant, Emory & Henry University, hereby removes the State Court Action to the United States District Court for the Western District of Virginia, Abingdon Division, and respectfully requests that this Court assume jurisdiction over this civil action.

DATED: November 15, 2024

EMORY & HENRY UNIVERSITY

By: /s/ Mary Elizabeth Davis  
Mary Elizabeth Davis (VSB No. 41908)  
Caitlin E. Tobin (VSB No. 98432)  
WHITEFORD, TAYLOR & PRESTON L.L.P.  
Two James Center  
1021 E. Cary Street, Suite 2001  
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E-mail: bdavis@whitefordlaw.com  
E-mail: ctobin@whitefordlaw.com

*Counsel for Defendant Emory & Henry University*

Case 1:24-cv-00057-JPJ-PMS Document 1 Filed 11/15/24 Page 4 of 4 Pageid#: 4

**CERTIFICATE OF SERVICE**

I hereby certify that on November 15, 2024, I electronically filed the foregoing with the Clerk of Court via the CM/ECF System which will send notification of such filing to those registered to receive electronic notices via email transmission at the email addresses provided by them, and also sent a copy to counsel for Plaintiff, Jane Doe, at the address stated below, via electronic mail and U.S. mail, postage prepaid, on November 15, 2024, to:

Benjamin North (VSB No. 97439)  
Lindsay R. McKasson (VSB No. 96074)  
Binnall Law Group  
717 King Street, Suite 200  
Alexandria, Virginia 22314  
Telephone: (703) 888-1943  
Facsimile: (703) 888-1930  
Email: [ben@binnall.com](mailto:ben@binnall.com)  
[lindsay@binnall.com](mailto:lindsay@binnall.com)

*Counsel for Plaintiff Jane Doe*

/s/ Mary Elizabeth Davis  
Mary Elizabeth Davis

**COMMONWEALTH OF VIRGINIA**

WASHINGTON CIRCUIT COURT  
Civil Division  
189 EAST MAIN STREET  
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Summons

To: EMORY & HENRY UNIVERSITY  
C/O MARK GRAHAM (RA)  
30461 GARNAND DR  
EMORY VA 24327

Case No. 191CL24001888-00

The party upon whom this summons and the attached complaint are served is hereby notified that unless within 21 days after such service, response is made by filing in the clerk's office of this court a pleading in writing, in proper legal form, the allegations and charges may be taken as admitted and the court may enter an order, judgment, or decree against such party either by default or after hearing evidence.

Appearance in person is not required by this summons.

Done in the name of the Commonwealth of Virginia on, Wednesday, October 23, 2024

Clerk of Court: PATRICIA S. MOORE

by \_\_\_\_\_

A handwritten signature in blue ink, appearing to read "P.S. MOORE".

(CLERK/DEPUTY CLERK )

Instructions: COMPLAINT

Hearing Official:

Attorney's name:

NORTH, BENJAMIN F  
717 KING ST SUITE 300  
ALEXANDRIA VA 22314

**VIRGINIA:****IN THE CIRCUIT COURT FOR WASHINGTON COUNTY**

FILED  
OCT 22 2024  
DEPUTY CLERK CIRCUIT COURT  
WASHINGTON COUNTY, VA

**JANE DOE,****Plaintiff,****v.****EMORY & HENRY UNIVERSITY,**  
c/o Mark R. Graham (registered agent)  
30461 Garnand Drive,  
Emory, Virginia 24327-2500,**Defendant.****Case No. 24-1888****JURY TRIAL DEMANDED****COMPLAINT**

Emory & Henry University did not want sixty year old equestrian coach – it wanted one thirty years younger. The University desperately wanted a pretext that it could use to replace Plaintiff with a younger employee, and finally got what it wanted when a false Title IX complaint was filed against Ms. Doe. When the University was already communicating about her replacement, the University received this complaint and jumped into action, terminating Ms. Doe within days of receiving the complaint. In doing so, the University completely ignored federal regulations enforcing Title IX and instead summarily terminated her. Accordingly, Ms. Doe brings this civil action against Defendant for violations of the Age Discrimination in Employment Act (“ADEA”), the Virginia Human Rights Act (“VHRA”), negligence, and negligence *per se*. For her Complaint against Defendant, Jane Doe states as follows:

**Parties**

1. Jane Doe (“Ms. Doe”) was an assistant clinical professor or equine studies at the University. She is sixty-one years old.

2. Emory & Henry University (the “University”) is a private higher education institution located in Washington County, Virginia.

**Jurisdiction and Venue**

3. Subject matter jurisdiction is proper in the Commonwealth of Virginia and the Circuit Court of Washington County because the amount in controversy exceeds \$25,000.

4. This Court possesses personal jurisdiction over the University by virtue of its domicile and its transacting business in the Commonwealth. Va. Code § 8.01-328.1(A).

5. Venue is proper in this Court because all causes of action arose in Washington County, Virginia. Va. Code § 8.01-262.

**The University’s Background**

6. Institutions of higher education are required by law, as interpreted by the United States Supreme Court, to adjudicate claims of sexual harassment under the auspices of Title IX.

7. Title IX is a federal statute prohibiting discrimination on the basis of sex for all persons in educational institutions that receive federal funding. *See* 20 U.S.C. § 1681.

8. The University receives federal funding. Withdrawal of federal funding by the U.S. Department of Education would be financially ruinous for the University.

9. The University maintains a Title IX Office.

10. The University's Title IX personnel, including Title IX Coordinator Yancey Wilmoth, received training on the controlling Title IX regulations.

11. The University's Human Resources Office, including Director of Human Resources Tracy Peery, also received training on the controlling Title IX regulations.

**Federal Title IX Regulations and University Policy**

12. In May of 2020, the U.S. Department of Education promulgated regulations interpreting Title IX, codified at 34 C.F.R. 106, titled "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance."

13. The U.S. Department of Education interpreted the effective date to mean that the regulations applied to all reports of sexual harassment (construed broadly to include allegations of sexual assault and other offenses) concerning conduct occurring on or after August 14, 2020.

14. The federal regulations applied to this matter because, among other things, John Roe alleged conduct occurring exclusively in the year 2023.

15. The federal regulations set forth procedural requirements for the University's adjudication of Title IX matters. Accordingly, the University is required by the regulations to adopt these procedural provisions in its own policies and procedures, for use in student-on-student sexual misconduct complaints.

16. The University adopted the regulations' procedural requirements, as reflected in the University's "Title IX and Sexual Harassment Policy" ("Policy"), which states that the Policy is intended to "meet the University's obligations" under Title IX.

17. Therefore, the University is not at liberty to substantially alter its Policy without federal regulatory change. Rather, in exchange for federal funding and the payment of tuition by students (without which the University would not exist or be in a position to receive federal funding), the University has agreed to be bound by its regulation-compliant Policy.

18. Under the 2020 regulations, the University is obligated to respond to a "formal complaint" of sexual harassment in a way compliant with the grievance process outlined in 34 C.F.R. §106.45.

19. The term "formal complaint" is defined by 34 C.F.R. §106.30 as, in relevant part, "a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment."

20. The Department requires that a "formal complaint" be filed, and the grievance process at 34 C.F.R. §106.45 be completed, before "the imposition of any disciplinary sanctions or other actions that are not supportive measures." 34 C.F.R. §106.44(a).

21. The 34 C.F.R. 106.45 grievance process, in the context of postsecondary educational institutions receiving federal funding, requires that a University provide

formal notice of the allegations against the respondent before any investigation, generate an investigative report, hold a live hearing with cross examination, and contain an appeal process before any discipline is imposed, among other things. *See generally* 34 C.F.R. §106.45(b).

22. “Each of the procedural requirements in § 106.45 is prescribed because the Department views the requirement as important to ensuring a fair process for both parties rooted in the fundamental due process principles of notice and meaningful opportunities to be heard.” 85 Fed. Reg. 30053.

23. The term “formal complaint” has a static and defined meaning. If, for example, a recipient of federal funds could avoid the requirements of 34 C.F.R. §106.45 simply by labeling a complaint “informal,” the entire regulatory scheme would unravel. Any college or university could use this method to simply avoid ever using the 34 C.F.R. §106.45 grievance process.

#### **Background of Ms. Doe and John Roe**

24. Following a professional equestrian career, Ms. Doe began employment at the University in the Spring of 2023 as an assistant clinical professor in the equestrian program.

25. Ms. Doe replaced an employee who repeatedly drank to excess on the job but was never disciplined.

26. Ms. Doe never received any negative performance reviews during the entirety of her employment at the University.

27. Ms. Doe thoroughly enjoyed teaching and built positive relationships with all of her students, absent any complaints from any of her students.

28. John Roe was one of many students, male and female, who had a friendly professional relationship with Ms. Doe.

29. John Roe was somewhat of a class clown whose company was enjoyed by other students and Ms. Doe. He frequently made jokes with his fellow students and Ms. Doe.

**The Anonymous Title IX Complaint**

30. According to the University, on or around October 27, 2023, an employee at the University submitted an Title IX complaint against Ms. Doe.

31. On October 31, 2023, the University sent Ms. Doe an email seeking an interview related to the “informal complaint of sexual harassment.” The University did not tell Ms. Doe the substance of the complaint or who made the complaint. Eventually, however, she would discover that the complaint alleged that John Roe had been made “uncomfortable” by texts and “photos” from Ms. Doe.

32. John Roe never filed any complaint himself.

33. Nor did Ms. Doe ever send any sexual or inappropriate texts or photos (or anything else sexual whatsoever) to John Roe or any other student. While she texted many of her students and sent equestrian related photos, there was never anything remotely sexual about any of Ms. Doe’s behavior with her students.

**The University Conducts its “Informal” Investigation For A Week**

34. Ms. Doe sat for an interview on November 1, 2023. At that interview, both Yancey Wilmoth and Tracy Peery were present.

35. Both Wilmoth and Peery, having been trained in Title IX, knew that the “notice” sent to Ms. Doe seeking the interview was not complaint with federal regulations interpreting Title IX.

36. In fact, Wilmoth and Peery referred to the complaint against Ms. Doe as an “informal complaint.” But the term “informal complaint” does not appear in University Policy.

37. The term “informal complaint” is created out of whole cloth for the sole purpose of disclaiming the regulations’ requirement that a recipient follow 34 C.F.R. §106.45 in response to a “formal complaint.” Wilmoth and Peery, having been trained in Title IX, knew that a “formal complaint” must be adjudicated according to 34 C.F.R. §106.45, and they referred to the complaint against Ms. Doe as an “informal complaint” for the sole purpose of avoiding the regulations.

38. Indeed, according to federal regulation, a Notice of Allegations must, among other things, “include the identities of the parties involved in the incident, if known, [and] the conduct allegedly constituting sexual harassment under § 106.30, and the date and location of the alleged incident, if known.” 34 C.F.R. §106.45(b)(2)(B).

39. Further, “the written notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, under

paragraph (b)(5)(iv) of this section, and may inspect and review evidence under paragraph (b)(5)(vi) of this section.” *Id.*

40. A Notice of Allegations must also “inform the parties of any provision in the recipient’s code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.” *Id.*

41. The federal government’s purpose in drafting §106.45(b)(2) was that “[f]undamental fairness and due process principles require that a respondent knows the details of the allegations made against the respondent, to the extent the details are known, to provide adequate opportunity for the respondent to respond.”<sup>1</sup>

42. The “informal” “notice” contained none of the required elements cited above. Instead, it merely said that due to “the nature of the complaint” Ms. Doe’s “presence will ... be required” at an interview.

43. During the interview, Ms. Doe was subjected to treatment that one would find in a Franz Kafka novel. Wilmoth and Peery were extremely hostile towards Ms. Doe; they interrogated her about a complaint where Ms. Doe did not know the details of the complaint. At the same time, they demanded confessions from Ms. Doe and accused her (without evidence) of deleting evidence in bad faith.

44. At the close of the interview, Ms. Doe offered to provide witnesses, among other things, to Wilmoth and Peery. Wilmoth and Peery told Ms. Doe “that’s

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<sup>1</sup> Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 85 Fed. Reg. 30026, 30133 (May 19, 2020).

good" and "that's what you're supposed to be doing." At a minimum, Wilmoth and Peery never instructed Ms. Doe to not reach out to witnesses.

45. Nor could they, because federal regulations protect Ms. Doe's right to gather and present evidence and witnesses. 34 C.F.R. §106.45(b)(5)(iii) (schools may not restrict the ability of parties to gather evidence).

46. But when Ms. Doe submitted witnesses to Wilmoth and Peery or was otherwise gathering witnesses and evidence in the days following the interview, Peery reprimanded her. Peery emailed Ms. Doe that she needed to "stop reaching out to students asking them to be witnesses for you." She continued (as if gathering witnesses to support her innocence was a violation in itself): "I have evidence that you have been doing so and have violated the confidentiality of the investigation. Your actions are unprofessional and need to stop."

47. When Peery sent this email, she knew that Ms. Doe had the right to gather witnesses and that the University could not even prohibit her from discussing the investigation. 34 C.F.R. §106.45(b)(5)(iii). But she chose to intimidate Ms. Doe anyway.

48. University Policy and federal law afford Ms. Doe the right to be presumed "not responsible" throughout the investigation and adjudication.

49. Obviously, the University did not presume Ms. Doe not responsible. It presumed her responsible and interrogated her with that presumption in mind.

50. The University took less than one week to adjudicate the "informal" complaint against Ms. Doe. It found her responsible for the allegation against her.

51. In a meeting on November 8, 2023, Ms. Doe was notified that she was terminated from employment because of the findings of the investigation. She was immediately escorted by security to clean out her desk, and was marched off of campus.

52. During the November 8 meeting, Peery insisted (in a transparent attempt to skirt liability) that Ms. Doe was terminated “at will” despite the findings against her.

**Ms. Doe Discovers Additional Context and Exhausts Remedies**

53. After Ms. Doe was terminated, she discovered from at least three witnesses with knowledge that the University intended to replace her with a younger employee before the Title IX allegations were ever made.

54. Although the University posted the job posting on November 14, 2023, it had communications with Ms. Doe’s replacement before the job was posted publicly.

55. Ms. Doe was indeed replaced by this employee, who is thirty years Ms. Doe’s junior.

56. Ms. Doe filed a charge of discrimination with the United States Equal Employment Opportunity Commission (“EEOC”) and the Virginia Office of Civil Rights on March 7, 2024.

57. She received a Notice of Right to Sue from the EEOC on July 25, 2024. This Notice also suffices as a Notice of Right to Sue under the VHRA. Va. Code §2.2-3907(I).

**The University Continues to Punish Ms. Doe**

58. As a result of the University's wrongful finding and termination, Ms. Doe suffers severe emotional, psychological, and financial harm.

59. While suffering this harm, and having to deal with the unexpected loss of income, Ms. Doe sought unemployment from the North Carolina Department of Commerce.

60. As the University had repeatedly told her on November 8, Ms. Doe represented to the North Carolina agency that she had been terminated "at will" and not "for cause." The former would entitle her to unemployment income whereas the latter would not.

61. In a remarkable showing of contempt towards Ms. Doe, the University opposed Ms. Doe's request for unemployment. At a hearing, counsel for the University testified and argued for the first time that Ms. Doe was not terminated "at will" and instead because she sexually harassed a student.

62. Appearing pro se, Ms. Doe testified at the hearing, and successfully obtained unemployment income. The North Carolina agency further made findings of fact that, among other things, "[Ms. Doe] did not sexually harass anyone during her tenure at with Emory & Henry College."

### CAUSES OF ACTION

#### COUNT I

##### **Age Discrimination in Violation of the ADEA**

63. Ms. Doe incorporates all prior allegations as if fully stated herein.

64. Ms. Doe was an employee over 40 years of age at the University, entitling her to rights under the federal Age Discrimination in Employment Act (“ADEA”).

65. The University is required to abide by ADEA’s prohibition on age discrimination.

66. The University discriminated against Ms. Doe on the basis of age by terminating her in violation of federal law and its policies and then replacing her with a younger employee.

67. Ms. Doe is protected by ADEA from discrimination on the basis of her age.

68. Ms. Doe was qualified for her position at the University.

69. Ms. Doe suffered adverse employment actions, including but not limited to her firing.

70. She was replaced by a younger employee.

71. There is no legitimate nondiscriminatory reason for the University’s behavior.

72. Even if a legitimate nondiscriminatory reason exists, it is merely pretext for unlawful discrimination.

73. Ms. Doe has suffered severe professional, economic, and psychological harm as a result of this discriminatory process orchestrated against her.

74. She requests liquidated damages under the ADEA.

**COUNT II**

**Age Discrimination in Violation of the VHRA**

75. Ms. Doe incorporates all prior allegations as if fully stated herein.

76. Ms. Doe was an employee over 40 years of age at the University, entitling her to rights under the Virginia Human Rights Act.

77. The University is required to abide by ADEA's prohibition on age discrimination.

78. The University discriminated against Ms. Doe on the basis of age by terminating her in violation of federal law and its policies and then replacing her with a younger employee.

79. Ms. Doe is protected by VHRA from discrimination on the basis of her age.

80. Ms. Doe was qualified for her position at the University.

81. Ms. Doe suffered adverse employment actions, including but not limited to her firing.

82. She was replaced by a younger employee.

83. There is no legitimate nondiscriminatory reason for the University's behavior.

84. Even if a legitimate nondiscriminatory reason exists, it is merely pretext for unlawful discrimination.

85. Ms. Doe has suffered severe professional, economic, and psychological harm as a result of this discriminatory process orchestrated against her.

86. She seeks compensatory and punitive damages, and any other available relief, under the VHRA.

**COUNT III**  
**Negligence *Per Se***

87. Ms. Doe incorporates all prior allegations as if fully stated herein.

88. The United States Department of Education promulgated regulations interpreting Title IX, codified at 34 C.F.R. 106, titled “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.”

89. 34 C.F.R. 106 is a binding regulation on the University.

90. 34 C.F.R. 106 was enacted for public safety. Specifically, the regulations were designed to both protect victims of sexual harassment and to protect students and faculty accused of sexual harassment.

91. Ms. Doe, as a faculty member, belonged to the class of persons the regulations were designed to protect.

92. The University’s violations of 34 C.F.R. 106 were a proximate cause of the injury to Ms. Doe, because the violations produced the harm to Ms. Doe and no efficient intervening cause exists that would have caused the harm to Ms. Doe.

93. As a result of the University’s breach of 34 C.F.R. 106, Ms. Doe suffers and continues to suffer substantial financial harm. Accordingly, Ms. Doe requests compensatory, incidental, and emotional damages.

**COUNT IV**  
**Negligence**

94. Ms. Doe incorporates all prior allegations as if fully stated herein.

95. In choosing to accept federal funding and adjudicate matters of sexual misconduct, the University assumed a duty to conduct its sexual misconduct proceedings with reasonable care under the circumstances, to avoid foreseeable harm to students or faculty subject to its procedures.

96. It was foreseeable that Ms. Doe would be harmed by the University's complete and total disregard of its own Title IX procedures.

97. The University breached its duty to Ms. Doe when it subjected her to the Title IX process and failed to abide by its own procedures, and otherwise conducted itself in a biased or partial manner.

98. The University's action was a proximate cause of Ms. Doe's injury, because Ms. Doe's injury would not have occurred absent the University's action, and because no efficient intervening cause exists that would have caused the harm to Ms. Doe.

99. As a result of the University's breach of its duty, Ms. Doe suffers and continues to suffer substantial financial harm. Accordingly, Ms. Doe requests compensatory, incidental, and emotional damages.

**JURY DEMAND**

100. Doe demands a trial by jury.

**PRAYER FOR RELIEF**

WHEREFORE Doe respectfully requests that this Court grant him the following relief against all Defendants:

1. Liquidated damages under the ADEA;
2. Other damages in an amount to be proved at trial;
3. Costs of suit;
4. Attorneys' fees, pursuant to 42 U.S.C § 1988(b); and
5. Such other and further relief as the Court deems necessary and proper.

Dated: October 22, 2024

Jane Doe  
By Counsel

BINNALL LAW GROUP, PLLC



Benjamin North, VSB No. 97439  
Lindsay R. McKasson, VSB No. 96074  
717 King Street, Suite 200  
Alexandria, Virginia 22314  
Phone: (703) 888-1943  
Fax: (703) 888-1930  
Email: ben@binnall.com  
lindsay@binnall.com

*Counsel for Plaintiff Jane Doe*

## VIRGINIA:

**IN THE CIRCUIT COURT FOR WASHINGTON COUNTY**

JANE DOE, )  
 )  
 Plaintiff, )  
 )  
 v. ) Case No. CL24001888-00  
 )  
 EMORY AND HENRY UNIVERSITY, )  
 )  
 Defendant. )

## **NOTICE OF FILING OF NOTICE OF REMOVAL**

PLEASE TAKE NOTICE that on November 15, 2024, Defendant, Emory and Henry University, by counsel, filed a Notice of Removal of the above-styled action with the United States District Court for the Western District of Virginia, Abingdon Division (the “District Court”). A true and accurate copy of the Notice of Removal filed with the District Court is attached hereto as

## Exhibit A.

DATED: November 15, 2024

## EMORY AND HENRY COLLEGE

Mr. Elwha Dr.

## Counsel

Mary Elizabeth Davis (VSB No. 41908)  
Caitlin E. Tobin (VSB No. 98432)  
WHITEFORD, TAYLOR & PRESTON L.L.P.  
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E-mail: bdavis@whitefordlaw.com  
E-mail: ctobin@whitefordlaw.com

*Counsel for Defendant Emory and Henry University*

**CERTIFICATE OF SERVICE**

I hereby certify that on November 15, 2024, a true and accurate copy of the foregoing *Notice of Filing of Notice of Removal* was sent by electronic mail and first-class mail, postage prepaid, to:

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Lindsay R. McKasson (VSB No. 96074)  
Binnall Law Group  
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Alexandria, Virginia 22314  
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Email: ben@binnall.com  
lindsay@binnall.com

*Counsel for Plaintiff Jane Doe*



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Mary Elizabeth Davis



**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44****Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
  - United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
  - United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
  - Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
  - Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
  - Original Proceedings. (1) Cases which originate in the United States district courts.
  - Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
  - Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
  - Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
  - Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
  - Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
  - Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.

**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
  - Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
  - Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

## VIRGINIA:

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 v. ) Case No. CL24001888-00  
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 EMORY AND HENRY UNIVERSITY, )  
 )  
 Defendant. )

**NOTIFICATION OF SERVICE OF**  
**NOTICE OF FILING OF NOTICE OF REMOVAL**

PLEASE TAKE NOTICE that on November 15, 2024, Defendant, Emory and Henry University, served the attached Notice of Filing of Notice of Removal upon Plaintiff, Jane Doe. Defendant's filing of the attached Notice in this Court effects the removal of this action, under 28 U.S.C. § 1446(d), to the United States District Court for the Western District of Virginia, Abingdon Division. Under 28 U.S.C. § 1446(d), this action shall proceed no further in the Circuit Court for Washington County unless and until this case is remanded.

DATED: November 15, 2024

## EMORY AND HENRY UNIVERSITY

Mr. Elwha Dr.

## Counsel

Mary Elizabeth Davis (VSB No. 41908)  
Caitlin E. Tobin (VSB No. 98432)  
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E-mail: ctobin@whitefordlaw.com

*Counsel for Defendant Emory and Henry University*

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Lindsay R. McKasson (VSB No. 96074)  
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*Counsel for Plaintiff Jane Doe*



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Mary Elizabeth Davis

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DATED: November 15, 2024

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Mr. Elwha Dr.

## Counsel

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*Counsel for Defendant Emory and Henry University*

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lindsay@binnall.com

*Counsel for Plaintiff Jane Doe*



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Mary Elizabeth Davis

Case 1:24-cv-00057-JPJ-PMS Document 1 Filed 11/15/24 Page 1 of 4 Pageid#:  
1

CLERKS OFFICE US DISTRICT COURT  
AT ABINGDON, VA  
FILED

November 15, 2024

LAURA A. AUSTIN, CLERK  
BY: /s/ Kendra Campbell  
DEPUTY CLERK

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
Abingdon Division**

JANE DOE, )  
                  )  
Plaintiff,     )  
                  )  
v.                )                   Civil Action No. 1:24cv57  
                  )  
EMORY & HENRY UNIVERSITY,     )  
                  )  
Defendant.     )

**NOTICE OF REMOVAL**

Defendant, Emory & Henry University (the “University” or “Defendant”), by counsel, pursuant to 28 U.S.C. §§ 1331, 1367, 1441, and 1446, petitions this Court for removal of an action instituted by Jane Doe (“Doe” or “Plaintiff”), in the Circuit Court for Washington County, styled *Jane Doe v. Emory and Henry University* (Case No. CL24001888-00) (the “State Court Action”).

In support of this Notice, Defendant respectfully states as follows:

**BACKGROUND**

1. On October 22, 2024, Plaintiff commenced this action by filing a Complaint in the Circuit Court for Washington County.
2. In compliance with 28 U.S.C. § 1446(a), a copy of all process, pleadings, and orders served upon Defendant are attached hereto as Exhibit A.

**TIMELINESS OF REMOVAL AND VENUE**

3. The University was served with process in the State Court Action on October 29, 2024.

4. The removal of the State Court Action is timely because, pursuant to 28 U.S.C. § 1446(b), this Notice of Removal has been filed within thirty (30) days after the University was served with process.

5. This Court is the proper venue for removal under 28 U.S.C. § 1441(a) because it is the federal district court that embraces the Circuit Court for Washington County, where the State Court Action was filed and is pending.

#### **GROUNDS FOR REMOVAL**

6. The four-count Complaint alleges that the University violated the Age Discrimination in Employment Act, 29 U.S.C. §§ 621–634 (the “ADEA”); that the University violated the Virginia Human Rights Act (the “VHRA”); and claims of negligence and negligence per se related to the University’s process and procedures under Title IX of the Education Act of 1972, 20 U.S.C. §§ 1681 *et seq.* (“Title IX”).

7. This Court has original jurisdiction over Plaintiff’s federal question claim and supplemental jurisdiction over Plaintiff’s state law claims. *See* 28 U.S.C. § 1331 (declaring that the district courts have original jurisdiction of all civil actions arising under the laws of the United States); 28 U.S.C. § 1367(a) (“[I]n any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy.”).

8. This Court has original jurisdiction over Plaintiff’s federal question claim under the ADEA, as this claim arises under the laws of the United States. *See* 28 U.S.C. § 1331.

9. This Court has supplemental jurisdiction over Plaintiff’s state law claims for violation of the VHRA, negligence per se, and negligence, as they are based on the same set of

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facts as the federal claim and, thus, form part of the same case or controversy as Plaintiff's ADEA claim. *See* 28 U.S.C. § 1367(a).

10. Accordingly, removal to this Court is proper pursuant to 28 U.S.C. §§ 1331, 1367(a), and 1441(a).

**NOTICE TO PLAINTIFF AND STATE COURT**

11. Pursuant to 28 U.S.C. § 1446(d), the University, by and through the undersigned counsel, is contemporaneously filing a copy of this Notice of Removal with the Clerk of the Circuit Court of Washington County (the "Notice of Filing of Notice of Removal"). A true and correct copy of the Notice of Filing of Notice of Removal is attached hereto as **Exhibit B**.

12. This Notice of Removal is also being served on Plaintiff's counsel pursuant to 28 U.S.C. § 1446(d).

WHEREFORE, Defendant, Emory & Henry University, hereby removes the State Court Action to the United States District Court for the Western District of Virginia, Abingdon Division, and respectfully requests that this Court assume jurisdiction over this civil action.

DATED: November 15, 2024

EMORY & HENRY UNIVERSITY

By: /s/ Mary Elizabeth Davis  
Mary Elizabeth Davis (VSB No. 41908)  
Caitlin E. Tobin (VSB No. 98432)  
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*Counsel for Defendant Emory & Henry University*

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 15, 2024, I electronically filed the foregoing with the Clerk of Court via the CM/ECF System which will send notification of such filing to those registered to receive electronic notices via email transmission at the email addresses provided by them, and also sent a copy to counsel for Plaintiff, Jane Doe, at the address stated below, via electronic mail and U.S. mail, postage prepaid, on November 15, 2024, to:

Benjamin North (VSB No. 97439)  
Lindsay R. McKasson (VSB No. 96074)  
Binnall Law Group  
717 King Street, Suite 200  
Alexandria, Virginia 22314  
Telephone: (703) 888-1943  
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*Counsel for Plaintiff Jane Doe*

/s/ Mary Elizabeth Davis  
Mary Elizabeth Davis

**COMMONWEALTH OF VIRGINIA**

WASHINGTON CIRCUIT COURT  
Civil Division  
189 EAST MAIN STREET  
ABINGDON VA 24210  
(276) 676-6224

Summons

To: EMORY & HENRY UNIVERSITY  
C/O MARK GRAHAM (RA)  
30461 GARNAND DR  
EMORY VA 24327

Case No. 191CL24001888-00

The party upon whom this summons and the attached complaint are served is hereby notified that unless within 21 days after such service, response is made by filing in the clerk's office of this court a pleading in writing, in proper legal form, the allegations and charges may be taken as admitted and the court may enter an order, judgment, or decree against such party either by default or after hearing evidence.

Appearance in person is not required by this summons.

Done in the name of the Commonwealth of Virginia on, Wednesday, October 23, 2024

Clerk of Court: PATRICIA S. MOORE

by \_\_\_\_\_

A handwritten signature in blue ink, appearing to read "P.S. MOORE". Below the signature, the text "(CLERK/DEPUTY CLERK)" is written in parentheses.

Instructions: COMPLAINT

Hearing Official:

Attorney's name:

NORTH, BENJAMIN F  
717 KING ST SUITE 300  
ALEXANDRIA VA 22314

VIRGINIA:

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY

FILED  
OCT 22 2024  
DEPUTY CLERK CIRCUIT COURT  
WASHINGTON COUNTY, VA

JANE DOE,

Plaintiff,

v.

EMORY & HENRY UNIVERSITY,  
c/o Mark R. Graham (registered agent)  
30461 Garnand Drive,  
Emory, Virginia 24327-2500,

Defendant.

Case No. 24-1888

JURY TRIAL DEMANDED

COMPLAINT

Emory & Henry University did not want sixty year old equestrian coach – it wanted one thirty years younger. The University desperately wanted a pretext that it could use to replace Plaintiff with a younger employee, and finally got what it wanted when a false Title IX complaint was filed against Ms. Doe. When the University was already communicating about her replacement, the University received this complaint and jumped into action, terminating Ms. Doe within days of receiving the complaint. In doing so, the University completely ignored federal regulations enforcing Title IX and instead summarily terminated her. Accordingly, Ms. Doe brings this civil action against Defendant for violations of the Age Discrimination in Employment Act (“ADEA”), the Virginia Human Rights Act (“VHRA”), negligence, and negligence *per se*. For her Complaint against Defendant, Jane Doe states as follows:

**Parties**

1. Jane Doe (“Ms. Doe”) was an assistant clinical professor or equine studies at the University. She is sixty-one years old.

2. Emory & Henry University (the “University”) is a private higher education institution located in Washington County, Virginia.

**Jurisdiction and Venue**

3. Subject matter jurisdiction is proper in the Commonwealth of Virginia and the Circuit Court of Washington County because the amount in controversy exceeds \$25,000.

4. This Court possesses personal jurisdiction over the University by virtue of its domicile and its transacting business in the Commonwealth. Va. Code § 8.01-328.1(A).

5. Venue is proper in this Court because all causes of action arose in Washington County, Virginia. Va. Code § 8.01-262.

**The University’s Background**

6. Institutions of higher education are required by law, as interpreted by the United States Supreme Court, to adjudicate claims of sexual harassment under the auspices of Title IX.

7. Title IX is a federal statute prohibiting discrimination on the basis of sex for all persons in educational institutions that receive federal funding. *See* 20 U.S.C. § 1681.

8. The University receives federal funding. Withdrawal of federal funding by the U.S. Department of Education would be financially ruinous for the University.

9. The University maintains a Title IX Office.

10. The University's Title IX personnel, including Title IX Coordinator Yancey Wilmoth, received training on the controlling Title IX regulations.

11. The University's Human Resources Office, including Director of Human Resources Tracy Peery, also received training on the controlling Title IX regulations.

**Federal Title IX Regulations and University Policy**

12. In May of 2020, the U.S. Department of Education promulgated regulations interpreting Title IX, codified at 34 C.F.R. 106, titled "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance."

13. The U.S. Department of Education interpreted the effective date to mean that the regulations applied to all reports of sexual harassment (construed broadly to include allegations of sexual assault and other offenses) concerning conduct occurring on or after August 14, 2020.

14. The federal regulations applied to this matter because, among other things, John Roe alleged conduct occurring exclusively in the year 2023.

15. The federal regulations set forth procedural requirements for the University's adjudication of Title IX matters. Accordingly, the University is required by the regulations to adopt these procedural provisions in its own policies and procedures, for use in student-on-student sexual misconduct complaints.

16. The University adopted the regulations' procedural requirements, as reflected in the University's "Title IX and Sexual Harassment Policy" ("Policy"), which states that the Policy is intended to "meet the University's obligations" under Title IX.

17. Therefore, the University is not at liberty to substantially alter its Policy without federal regulatory change. Rather, in exchange for federal funding and the payment of tuition by students (without which the University would not exist or be in a position to receive federal funding), the University has agreed to be bound by its regulation-compliant Policy.

18. Under the 2020 regulations, the University is obligated to respond to a "formal complaint" of sexual harassment in a way compliant with the grievance process outlined in 34 C.F.R. §106.45.

19. The term "formal complaint" is defined by 34 C.F.R. §106.30 as, in relevant part, "a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment."

20. The Department requires that a "formal complaint" be filed, and the grievance process at 34 C.F.R. §106.45 be completed, before "the imposition of any disciplinary sanctions or other actions that are not supportive measures." 34 C.F.R. §106.44(a).

21. The 34 C.F.R. 106.45 grievance process, in the context of postsecondary educational institutions receiving federal funding, requires that a University provide

formal notice of the allegations against the respondent before any investigation, generate an investigative report, hold a live hearing with cross examination, and contain an appeal process before any discipline is imposed, among other things. *See generally* 34 C.F.R. §106.45(b).

22. “Each of the procedural requirements in § 106.45 is prescribed because the Department views the requirement as important to ensuring a fair process for both parties rooted in the fundamental due process principles of notice and meaningful opportunities to be heard.” 85 Fed. Reg. 30053.

23. The term “formal complaint” has a static and defined meaning. If, for example, a recipient of federal funds could avoid the requirements of 34 C.F.R. §106.45 simply by labeling a complaint “informal,” the entire regulatory scheme would unravel. Any college or university could use this method to simply avoid ever using the 34 C.F.R. §106.45 grievance process.

#### **Background of Ms. Doe and John Roe**

24. Following a professional equestrian career, Ms. Doe began employment at the University in the Spring of 2023 as an assistant clinical professor in the equestrian program.

25. Ms. Doe replaced an employee who repeatedly drank to excess on the job but was never disciplined.

26. Ms. Doe never received any negative performance reviews during the entirety of her employment at the University.

27. Ms. Doe thoroughly enjoyed teaching and built positive relationships with all of her students, absent any complaints from any of her students.

28. John Roe was one of many students, male and female, who had a friendly professional relationship with Ms. Doe.

29. John Roe was somewhat of a class clown whose company was enjoyed by other students and Ms. Doe. He frequently made jokes with his fellow students and Ms. Doe.

**The Anonymous Title IX Complaint**

30. According to the University, on or around October 27, 2023, an employee at the University submitted an Title IX complaint against Ms. Doe.

31. On October 31, 2023, the University sent Ms. Doe an email seeking an interview related to the “informal complaint of sexual harassment.” The University did not tell Ms. Doe the substance of the complaint or who made the complaint. Eventually, however, she would discover that the complaint alleged that John Roe had been made “uncomfortable” by texts and “photos” from Ms. Doe.

32. John Roe never filed any complaint himself.

33. Nor did Ms. Doe ever send any sexual or inappropriate texts or photos (or anything else sexual whatsoever) to John Roe or any other student. While she texted many of her students and sent equestrian related photos, there was never anything remotely sexual about any of Ms. Doe’s behavior with her students.

**The University Conducts its “Informal” Investigation For A Week**

34. Ms. Doe sat for an interview on November 1, 2023. At that interview, both Yancey Wilmoth and Tracy Peery were present.

35. Both Wilmoth and Peery, having been trained in Title IX, knew that the “notice” sent to Ms. Doe seeking the interview was not complaint with federal regulations interpreting Title IX.

36. In fact, Wilmoth and Peery referred to the complaint against Ms. Doe as an “informal complaint.” But the term “informal complaint” does not appear in University Policy.

37. The term “informal complaint” is created out of whole cloth for the sole purpose of disclaiming the regulations’ requirement that a recipient follow 34 C.F.R. §106.45 in response to a “formal complaint.” Wilmoth and Peery, having been trained in Title IX, knew that a “formal complaint” must be adjudicated according to 34 C.F.R. §106.45, and they referred to the complaint against Ms. Doe as an “informal complaint” for the sole purpose of avoiding the regulations.

38. Indeed, according to federal regulation, a Notice of Allegations must, among other things, “include the identities of the parties involved in the incident, if known, [and] the conduct allegedly constituting sexual harassment under § 106.30, and the date and location of the alleged incident, if known.” 34 C.F.R. §106.45(b)(2)(B).

39. Further, “the written notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, under

paragraph (b)(5)(iv) of this section, and may inspect and review evidence under paragraph (b)(5)(vi) of this section.” *Id.*

40. A Notice of Allegations must also “inform the parties of any provision in the recipient’s code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.” *Id.*

41. The federal government’s purpose in drafting §106.45(b)(2) was that “[f]undamental fairness and due process principles require that a respondent knows the details of the allegations made against the respondent, to the extent the details are known, to provide adequate opportunity for the respondent to respond.”<sup>1</sup>

42. The “informal” “notice” contained none of the required elements cited above. Instead, it merely said that due to “the nature of the complaint” Ms. Doe’s “presence will ... be required” at an interview.

43. During the interview, Ms. Doe was subjected to treatment that one would find in a Franz Kafka novel. Wilmoth and Peery were extremely hostile towards Ms. Doe; they interrogated her about a complaint where Ms. Doe did not know the details of the complaint. At the same time, they demanded confessions from Ms. Doe and accused her (without evidence) of deleting evidence in bad faith.

44. At the close of the interview, Ms. Doe offered to provide witnesses, among other things, to Wilmoth and Peery. Wilmoth and Peery told Ms. Doe “that’s

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<sup>1</sup> Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 85 Fed. Reg. 30026, 30133 (May 19, 2020).

good" and "that's what you're supposed to be doing." At a minimum, Wilmoth and Peery never instructed Ms. Doe to not reach out to witnesses.

45. Nor could they, because federal regulations protect Ms. Doe's right to gather and present evidence and witnesses. 34 C.F.R. §106.45(b)(5)(iii) (schools may not restrict the ability of parties to gather evidence).

46. But when Ms. Doe submitted witnesses to Wilmoth and Peery or was otherwise gathering witnesses and evidence in the days following the interview, Peery reprimanded her. Peery emailed Ms. Doe that she needed to "stop reaching out to students asking them to be witnesses for you." She continued (as if gathering witnesses to support her innocence was a violation in itself): "I have evidence that you have been doing so and have violated the confidentiality of the investigation. Your actions are unprofessional and need to stop."

47. When Peery sent this email, she knew that Ms. Doe had the right to gather witnesses and that the University could not even prohibit her from discussing the investigation. 34 C.F.R. §106.45(b)(5)(iii). But she chose to intimidate Ms. Doe anyway.

48. University Policy and federal law afford Ms. Doe the right to be presumed "not responsible" throughout the investigation and adjudication.

49. Obviously, the University did not presume Ms. Doe not responsible. It presumed her responsible and interrogated her with that presumption in mind.

50. The University took less than one week to adjudicate the "informal" complaint against Ms. Doe. It found her responsible for the allegation against her.

51. In a meeting on November 8, 2023, Ms. Doe was notified that she was terminated from employment because of the findings of the investigation. She was immediately escorted by security to clean out her desk, and was marched off of campus.

52. During the November 8 meeting, Peery insisted (in a transparent attempt to skirt liability) that Ms. Doe was terminated “at will” despite the findings against her.

**Ms. Doe Discovers Additional Context and Exhausts Remedies**

53. After Ms. Doe was terminated, she discovered from at least three witnesses with knowledge that the University intended to replace her with a younger employee before the Title IX allegations were ever made.

54. Although the University posted the job posting on November 14, 2023, it had communications with Ms. Doe’s replacement before the job was posted publicly.

55. Ms. Doe was indeed replaced by this employee, who is thirty years Ms. Doe’s junior.

56. Ms. Doe filed a charge of discrimination with the United States Equal Employment Opportunity Commission (“EEOC”) and the Virginia Office of Civil Rights on March 7, 2024.

57. She received a Notice of Right to Sue from the EEOC on July 25, 2024. This Notice also suffices as a Notice of Right to Sue under the VHRA. Va. Code §2.2-3907(I).

**The University Continues to Punish Ms. Doe**

58. As a result of the University's wrongful finding and termination, Ms. Doe suffers severe emotional, psychological, and financial harm.

59. While suffering this harm, and having to deal with the unexpected loss of income, Ms. Doe sought unemployment from the North Carolina Department of Commerce.

60. As the University had repeatedly told her on November 8, Ms. Doe represented to the North Carolina agency that she had been terminated "at will" and not "for cause." The former would entitle her to unemployment income whereas the latter would not.

61. In a remarkable showing of contempt towards Ms. Doe, the University opposed Ms. Doe's request for unemployment. At a hearing, counsel for the University testified and argued for the first time that Ms. Doe was not terminated "at will" and instead because she sexually harassed a student.

62. Appearing pro se, Ms. Doe testified at the hearing, and successfully obtained unemployment income. The North Carolina agency further made findings of fact that, among other things, "[Ms. Doe] did not sexually harass anyone during her tenure at with Emory & Henry College."

### CAUSES OF ACTION

#### COUNT I

##### **Age Discrimination in Violation of the ADEA**

63. Ms. Doe incorporates all prior allegations as if fully stated herein.

64. Ms. Doe was an employee over 40 years of age at the University, entitling her to rights under the federal Age Discrimination in Employment Act (“ADEA”).

65. The University is required to abide by ADEA’s prohibition on age discrimination.

66. The University discriminated against Ms. Doe on the basis of age by terminating her in violation of federal law and its policies and then replacing her with a younger employee.

67. Ms. Doe is protected by ADEA from discrimination on the basis of her age.

68. Ms. Doe was qualified for her position at the University.

69. Ms. Doe suffered adverse employment actions, including but not limited to her firing.

70. She was replaced by a younger employee.

71. There is no legitimate nondiscriminatory reason for the University’s behavior.

72. Even if a legitimate nondiscriminatory reason exists, it is merely pretext for unlawful discrimination.

73. Ms. Doe has suffered severe professional, economic, and psychological harm as a result of this discriminatory process orchestrated against her.

74. She requests liquidated damages under the ADEA.

**COUNT II**

**Age Discrimination in Violation of the VHRA**

75. Ms. Doe incorporates all prior allegations as if fully stated herein.

76. Ms. Doe was an employee over 40 years of age at the University, entitling her to rights under the Virginia Human Rights Act.

77. The University is required to abide by ADEA's prohibition on age discrimination.

78. The University discriminated against Ms. Doe on the basis of age by terminating her in violation of federal law and its policies and then replacing her with a younger employee.

79. Ms. Doe is protected by VHRA from discrimination on the basis of her age.

80. Ms. Doe was qualified for her position at the University.

81. Ms. Doe suffered adverse employment actions, including but not limited to her firing.

82. She was replaced by a younger employee.

83. There is no legitimate nondiscriminatory reason for the University's behavior.

84. Even if a legitimate nondiscriminatory reason exists, it is merely pretext for unlawful discrimination.

85. Ms. Doe has suffered severe professional, economic, and psychological harm as a result of this discriminatory process orchestrated against her.

86. She seeks compensatory and punitive damages, and any other available relief, under the VHRA.

**COUNT III**  
**Negligence *Per Se***

87. Ms. Doe incorporates all prior allegations as if fully stated herein.

88. The United States Department of Education promulgated regulations interpreting Title IX, codified at 34 C.F.R. 106, titled “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.”

89. 34 C.F.R. 106 is a binding regulation on the University.

90. 34 C.F.R. 106 was enacted for public safety. Specifically, the regulations were designed to both protect victims of sexual harassment and to protect students and faculty accused of sexual harassment.

91. Ms. Doe, as a faculty member, belonged to the class of persons the regulations were designed to protect.

92. The University’s violations of 34 C.F.R. 106 were a proximate cause of the injury to Ms. Doe, because the violations produced the harm to Ms. Doe and no efficient intervening cause exists that would have caused the harm to Ms. Doe.

93. As a result of the University’s breach of 34 C.F.R. 106, Ms. Doe suffers and continues to suffer substantial financial harm. Accordingly, Ms. Doe requests compensatory, incidental, and emotional damages.

**COUNT IV**  
**Negligence**

94. Ms. Doe incorporates all prior allegations as if fully stated herein.

95. In choosing to accept federal funding and adjudicate matters of sexual misconduct, the University assumed a duty to conduct its sexual misconduct proceedings with reasonable care under the circumstances, to avoid foreseeable harm to students or faculty subject to its procedures.

96. It was foreseeable that Ms. Doe would be harmed by the University's complete and total disregard of its own Title IX procedures.

97. The University breached its duty to Ms. Doe when it subjected her to the Title IX process and failed to abide by its own procedures, and otherwise conducted itself in a biased or partial manner.

98. The University's action was a proximate cause of Ms. Doe's injury, because Ms. Doe's injury would not have occurred absent the University's action, and because no efficient intervening cause exists that would have caused the harm to Ms. Doe.

99. As a result of the University's breach of its duty, Ms. Doe suffers and continues to suffer substantial financial harm. Accordingly, Ms. Doe requests compensatory, incidental, and emotional damages.

**JURY DEMAND**

100. Doe demands a trial by jury.

**PRAYER FOR RELIEF**

WHEREFORE Doe respectfully requests that this Court grant him the following relief against all Defendants:

1. Liquidated damages under the ADEA;
2. Other damages in an amount to be proved at trial;
3. Costs of suit;
4. Attorneys' fees, pursuant to 42 U.S.C § 1988(b); and
5. Such other and further relief as the Court deems necessary and proper.

Dated: October 22, 2024

Jane Doe  
By Counsel

BINNALL LAW GROUP, PLLC



Benjamin North, VSB No. 97439  
Lindsay R. McKasson, VSB No. 96074  
717 King Street, Suite 200  
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lindsay@binnall.com

*Counsel for Plaintiff Jane Doe*

## VIRGINIA:

**IN THE CIRCUIT COURT FOR WASHINGTON COUNTY**

JANE DOE, )  
 )  
 Plaintiff, )  
 )  
 v. ) Case No. CL24001888-00  
 )  
 EMORY AND HENRY UNIVERSITY, )  
 )  
 Defendant. )

**NOTICE OF FILING OF NOTICE OF REMOVAL**

PLEASE TAKE NOTICE that on November 15, 2024, Defendant, Emory and Henry University, by counsel, filed a Notice of Removal of the above-styled action with the United States District Court for the Western District of Virginia, Abingdon Division (the “District Court”). A true and accurate copy of the Notice of Removal filed with the District Court is attached hereto as

## Exhibit A.

DATED: November 15, 2024

## EMORY AND HENRY COLLEGE

Mr. Elwha Dr.

## Counsel

Mary Elizabeth Davis (VSB No. 41908)  
Caitlin E. Tobin (VSB No. 98432)  
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E-mail: ctobin@whitefordlaw.com

*Counsel for Defendant Emory and Henry University*

**CERTIFICATE OF SERVICE**

I hereby certify that on November 15, 2024, a true and accurate copy of the foregoing *Notice of Filing of Notice of Removal* was sent by electronic mail and first-class mail, postage prepaid, to:

Benjamin North (VSB No. 97439)  
Lindsay R. McKasson (VSB No. 96074)  
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lindsay@binnall.com

*Counsel for Plaintiff Jane Doe*



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Mary Elizabeth Davis



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Pageid#: 25

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
  - United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
  - United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
  - Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
  - Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
  - Original Proceedings. (1) Cases which originate in the United States district courts.
  - Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
  - Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
  - Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
  - Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
  - Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
  - Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.

**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
  - Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
  - Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ABINGDON DIVISIONFILED  
NOV 26 2024

JANE DOE,

DEPUTY CLERK CIRCUIT COURT  
WASHINGTON COUNTY, VA

Plaintiff,

Case No. 1:24cv57  
State Court No. CL24001888-00

v.

## O R D E R

EMORY &amp; HENRY UNIVERSITY,

Defendant.

CLERKS OFFICE US DISTRICT COURT  
AT ABINGDON, VA  
FILED

November 15, 2024

LAURA A. AUSTIN, CLERK  
BY: /s/ Kendra Campbell  
DEPUTY CLERK

This case was recently removed from the Circuit Court for Washington County to the United States District Court for the Western District of Virginia at Abingdon. This court, finding it necessary and proper to do so, hereby REQUESTS that the original case file in your Court be forwarded to the Clerk of this court at 180 W. Main Street, Room 104, Abingdon, VA 24210, or submitted through this court's Case Management and Electronic Case Filing system (CM/ECF).

The Clerk is directed to send a copy of this Order to the Clerk of the Circuit Court for Washington County.

ENTERED: November 15, 2024

/s/ Pamela Meade Sargent  
UNITED STATES MAGISTRATE JUDGEECF  
DOCUMENT

I hereby attest and certify that this is a printed copy of a document that was electronically filed with the United States District Court for the Western District of Virginia.

Date Filed 11/15/24By: K. Campbell  
Deputy Clerk

Laura A. Austin, Clerk of Court